S. HRG. 100-494

# TRANSPORTATION PROPERTY BROKERS

## HEARING

BEFORE THE

SUBCOMMITTEE ON SURFACE TRANSPORTATION

OF THE

## COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

## UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

FIRST SESSION

ON

TRANSPORTATION PROPERTY BROKERS IN THE MOTOR CARRIER AREA

NOVEMBER 13, 1987

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# TRANSPORTATION PROPERTY BROKERS

FRIDAY, NOVEMBER 13, 1987

U.S. SENATE,
SUBCOMMITTEE ON SURFACE TRANSPORTATION,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
*Washington, DC.*

The Subcommittee met, pursuant to notice, at 9:43 a.m., in room SR-253, Russell Senate Office Building, Hon. J. James Exon (chairman of the subcommittee) presiding.

Staff members assigned to this hearing: Robert Holleyman, staff counsel; Sheryl Webber Washington, professional staff member; and Alan Maness, minority staff counsel.

## OPENING STATEMENT BY SENATOR EXON

Senator EXON. The subcommittee will please come to order.

This morning, the Surface Transportation Subcommittee will conduct a hearing on transportation property brokers, focusing on the motor carrier area, in particular. Transportation brokers serve as middlemen between shippers and carriers.

Certain of these brokers are licensed by the Interstate Commerce Commission, and their numbers have grown enormously since 1980. In 1980, there were less than 100 licensed property brokers nationwide. There are over 6,000 today.

This phenomenal growth necessitates a close review of the impact on carriers, shippers, and brokers themselves.

This hearing also is a direct outgrowth that conversations that I and my staff have had with one of my constituents, Mr. Bob Antholz. Mr. Antholz owns an independent trucking company in Pawnee City, Nebraska.

I won't go into the details of Mr. Antholz' specific concerns since he is here to testify first-hand. Suffice it to say, however, that Mr. Antholz has complained of serious and abusive practices by unscrupulous middlemen and, as I have looked into this further, I have found that he is not alone on this sort of charge.

To look more closely at the allegations of abuse within the brokerage industry is, therefore, one of the primary reasons why I scheduled this hearing. This is also why I want to carefully examine what the Interstate Commerce Commission is doing in its regulation in this area.

There are several questions which I hope will be answered at this hearing. Are the current ICC licensing and bonding requirements adequate? Are there problems with unregulated middlemen, who serve functions similar to brokers but who manage to escape

all regulation? If so, are these problems sufficient in their magnitude to warrant Congressional action in this area?

I am hopeful that the witnesses scheduled to testify today will be able to shed some light on these questions. I am also hopeful that they will be able to provide us with an overview of the general developments in the brokerage industry as well.

To my knowledge, this is the first hearing scheduled on the issue of transportation brokers since passage of the Motor Carrier Act of 1980. I believe this hearing should do much to help the Committee build a thorough record in this important area.

Before we start with the first panel, I wish to call on my good friend, the Ranking Republican on the Subcommittee, the Senator from Wisconsin.

## OPENING STATEMENT BY SENATOR KASTEN

Senator KASTEN. Mr. Chairman, thank you, and thank you for calling a hearing on one of the fastest growing parts of the transportation industry, the brokerage business.

Prior to 1980, there were less than 100 licensed property brokers in the United States. Then the Congress and the Interstate Commerce Commission eased entry requirements for brokers, and there are now about 6,000 licensed property brokers. These brokers are involved in billions of dollars worth of U.S. truck freight movements each year.

The brokerage business, as you pointed out, Mr. Chairman, has grown rapidly because brokers are accomplished at matching shippers who have freight to move and carriers who want to move it.

Under Interstate Commerce Commission regulations, brokers are required to post a $10,000 bond and also to designate service of process agents in States where they operate.

Today's hearings will focus on whether these requirements are working well or whether we need additional broker rules. I expect the Commission to provide us information on the number and types of complaints it has received concerning brokers, and we will also learn whether self-policing efforts by groups such as the Transportation Brokers Conference of America are controlling unethical broker practices.

So, Mr. Chairman, I look forward to working with you and learning more about the brokerage business from today's witnesses, and I thank you for addressing this issue.

Senator EXON. Senator Kasten, thank you very much.

I think this is an area that is going to require more and more time of our subcommittee in the future. There is no question in my mind but that brokers and agents have done an awful lot of good in an awful lot of areas to improve our overall transportation system in general and in the trucking industry in particular. The question that we are going into this morning, as I indicated in my opening statement, is particularly focused on trucking.

Nevertheless, other things might come into play as we address this issue.

I have statements from Senators Hollings, Packwood, and Pressler that I will include in the record.

[The statements follow:]

### Opening Statement by the Chairman

The Surface Transportation Subcommittee hearing scheduled for this morning on this issue of transportation property brokers is an important one. There has been a tremendous growth in the brokerage industry in recent years. Deregulation brought about through the Motor Carrier Act of 1980 has resulted in thousands of new entrants in the transportation brokerage industry. The growtl. and certain practices within the industry have also led some carriers to come forward with allegations of abuse on the part of certain brokers.

This morning's hearing is intended to focus the committee's attention on these and other issues involving the brokerage and motor carrier industries. It will also build a record regarding the Interstate Commerce Commission's regulation in this area. I commend the subcommittee chairman for scheduling this hearing and for his diligent efforts to examine all issues of concern and importance in the area of surface transportation.

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### Opening Statement by Senator Packwood

Mr. Packwood. Mr. Chairman, at the time of the passage of the Motor Carrier Act of 1980, the transportation brokerage industry was not yet a vital part of the transportation industry. The Motor Carrier Act eased entry requirements for brokers and, as a result, thousands of companies throughout the country entered the transportation industry as brokers. This explosive growth in the brokerage industry reflected the need for innovative middlemen who could provide improved, efficient service in transportation transactions.

The freight brokerage industry has provided small carriers with sales capability in areas where they had not previously operated. It also has offered small shippers information about the availability of carriers and about more competitive rates.

The Interstate Commerce Commission (ICC) has jurisdiction over transportation brokers who participate in rail and truck freight movements. The ICC's testimony outlines many of the ways the brokerage industry serves the surface transportation industry. In addition to scheduling and rate information, brokers provide carriers with additional sources of traffic, arrange for the pick-up and delivery of freight, and participate in collection, billing and damage evaluation.

During the course of this hearing, we will hear complaints from carriers about brokers' operating practices. Most of the complaints in 1987 concerned a broker's failure to pay a carrier for moving a shipment. According to the ICC's Office of Compliance and Consumer Assistance (OCCA), the majority of the complaints it receives are resolved through administrative action. The OCCA believes that existing regulatory remedies are adequate to address the problems that do occur.

The brokerage industry has also taken significant steps to police itself. Its trade association, the Transportation Brokers Conference of America, expels members who do not pay undisputed freight bills within sixty days. It has also established an organization to educate, test, and license transportation brokers.

Mr. Chairman, the freight broker industry has undergone rapid growth, and is extremely competitive. These factors have, no doubt, led to a number of problems in the industry. However, legislation and further regulation of the brokerage industry is not the answer. The problems that do exist can be addressed through continued oversight of the brokerage industry by both this Subcommittee and the ICC. I look forward to working with all parties involved to ensure that brokers continue to provide fair and efficient service to shippers and carriers.

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### Opening Statement by Senator Pressler

Mr. Chairman, first let me congratulate you for scheduling today's hearing on the Interstate Commerce Commission's Regulation of Transportation Brokers. I am not passing judgment over all transportation brokers, but am well aware that there are problems occurring which must be addressed. I have received several inquiries from South Dakota truckers and others concerning potentially unethical practices by freight brokers around the country. There have been many incidents in which motor carriers have consigned to transport freight through a broker, but never received payment for the work. I commend you, Mr. Chairman, for recognizing the need to focus on this important issue.

The motor carrier industry is a vital part of our nation's economy. In this age of deregulation, we must take special care to ensure that this aspect of the transportation sector is allowed to operate in a fair and equitable environment. Broker abuse

can cost motor carriers hundreds, if not thousands of dollars every year, and reportedly has caused several firms to go out of business.

I have been in contact with the Interstate Commerce Commission concerning the transportation broker abuses and am pleased that today we have the opportunity to gain further insight into this matter. I understand that the ICC received 610 broker complaints during fiscal year 1987. Obviously, there are a number of carriers receiving very unsatisfactory service from brokers.

I am looking forward to hearing from today's witnesses and learning their views on the condition of the transportation broker industry. This industry is growing drastically each year. It is important to address the problems and prevent the abuses from occurring any longer.

Again, Mr. Chairman, thank you for holding this hearing. I am looking forward to hearing from the witnesses and hope we can work together to ensure that broker fraud is not allowed to continue.

Senator EXON. We have three panels this morning and we will move along as briskly as possible. I would ask our timekeeper to please keep time with the usual arrangement.

At this time, without objection, we will accept all of the testimony of all of the witnesses on the three panels as part of the record of these hearings. We will ask each and every one of you to briefly summarize as best you can the testimony that you will submit for the record.

At this time, to lead off this morning, I am very pleased to welcome Mr. John F. Hennigan, Chief for Policy, Interstate Commerce Commission, here in Washington, D.C., for his expert testimony.

Mr. Hennigan, thank you for coming over here this morning. We welcome you. We would ask you to proceed at this time, as I have outlined, and also to introduce any associates that you may have brought along with you to testify this morning.

**STATEMENT OF JOHN F. HENNIGAN, JR., CHIEF FOR POLICY, INTERSTATE COMMERCE COMMISSION, ACCOMPANIED BY BERNARD GAILLARD, DIRECTOR, OFFICE OF COMPLIANCE AND CONSUMER ASSISTANCE**

Mr. HENNIGAN. Thank you, Senator.

Good morning, and good morning, Senator Kasten.

My name is John Hennigan, and to my right is Bernard Gaillard, who is the Director of the Office of Compliance and Consumer Assistance at the Interstate Commerce Commission. The testimony is the testimony of the Commission.

The explosive growth in the brokerage industry is a reflection of the need for innovative middlemen, who seek out greater efficiencies and improved service in surface transportation transactions.

Property brokers serve the surface transportation industry in several ways. For example, they provide valuable information to carriers and shippers on price and service availability. They provide carriers with additional sources of traffic, arrange for the pickup and delivery of freight, and participate in scheduling, collection, billing, and damage evaluation.

The Commission recognizes the relative newness, rapid growth, and extremely competitive nature of the property broker industry and recognizes that this may, and in some sense has, led to some problems.

We also have heard complaints about abusive practices of licensed brokers. One issue before the Commission is how prevalent the problem is and what remedy is most appropriate.

The Commission has recently addressed the issue of lawful practices of property brokers in response to a petition for rulemaking by Senn Trucking Company. A majority of the Commission voted in a series of two decisions—December 2, 1986, and June 5, 1987—to deny the petition to amend the rules governing property brokers.

These two decisions represent the Commission's most recent examination of concerns raised about the property broker industry and provide a detailed discussion and explanation of the Commission's views on the proper response to these problems. They have been appended to the Commission's testimony for your convenience.

Let me outline some of the majority conclusions reached by the Commission in these decisions that are of particular relevance.

As both Senators have said this morning, the Motor Carrier Act of 1980 and the Commission's implementation of that act greatly eased entry into the property broker industry and allowed a flexibility that has encouraged new innovation, which increases efficiencies and improves service for shippers, carriers, and consumers. The relative newness of the industry and the explosive growth indeed has caused some problems, some transitional problems.

The total number of complaints, however, the complaints we receive about brokers is small, both in relation to the number of brokers that have been licensed since 1980 and in comparison with the total volume of freight that brokers participate in.

Just as with any other business transaction, prudent exercise of business judgment by carriers and shippers in entering agreements with licensed brokers and other middlemen prevents problems before they can occur. However, where problems do occur, existing regulatory remedies at the Interstate Commerce Commission, in our opinion, are adequate.

First, the licensed brokers, as Senator Kasten said, are subject to a $10,000 bonding requirement, designed to insure performance of brokerage services. Brokers also designate service of process agents in States where they operate, to facilitate collecting on the surety bond.

Furthermore, our Office of Compliance and Consumer Assistance, Mr. Gaillard's office, investigates complaints that we receive, obtains consent agreements, and refers possible criminal violations to the Department of Justice. These are things that we do with respect to brokers.

This competitive environment that the property brokerage industry faces forces them to realize that they must play a major role in insuring the development of ethical and professional service and promoting satisfactory relations between all parties.

Internal industry efforts are being successfully implemented in our view by the Transportation Broker Conference of America.

On the other hand, new regulations, such as those proposed by Senn Trucking in Docket Number 39962, which seek to regulate more strictly broker pricing and payment practices, may have the negative effect of reducing the flexibility of broker operations, imposing significant changes in transportation relationships, disrupting the current balance in bargaining positions of carriers and brokers, and reducing competition between carriers and brokers.

Adopting such regulations may be inconsistent with Congressional directions, as reflected in the recent legislation at the end of 1986, deregulating the surface freight forwarders from our economic regulation.

These regulations would have a chilling effect, not just on competition between brokers and carriers, but an unfortunate, chilling effect on shippers. Shippers rely on brokers to facilitate the movement of freight. The regulations, as they were proposed, would not just decrease competition between brokers and carriers, but, unfortunately, would stifle and make transactions more difficult for the shippers themselves, who have come to rely on brokerage services.

If brokers did not I would provide a useful service to shippers, then shippers would provide those services themselves.

Since 1980, the exact opposite has happened, and the Commission, in our regulations and decisions, have tried not to stifle that creativity and the usefulness of brokers and other third party middlemen.

As Senator Kasten mentioned, the Commission is concerned about the surety bond issue with respect to brokers. We have addressed this recently.

The Commission clarified Commission regulations to authorize property brokers to meet the Commission's security requirements by filing security other than prescribed surety bonds. The decision also clarified—this is very important—that protection of the surety bond extended to motor carriers as well as shippers. In a related matter, the Commission opened a proceeding for the purpose of obtaining comments on the types of security, other than surety bonds, that would satisfy this formal requirement.

The Commission decision adopted interim rules that authorized the filing of trust funds as an alternative to a surety bond.

Very briefly, I would like to conclude by discussing some of the broker monitoring activities conducted by our Office of Compliance and Consumer Assistance.

Senator EXON. We would like to hear about that, Mr. Hennigan.

Mr. HENNIGAN. Yes, sir. These include complaint handling, compliance, and enforcement activities.

Regarding complaints, in fiscal year 1987, the Commission received 610 broker-related complaints involving regulated and unregulated matters.

Senator EXON. How many was that?

Mr. HENNIGAN. It was 610, Senator.

Senator EXON. Thank you.

Mr. HENNIGAN. What is important about this number and what is important about what the Commission has done recently is that, in prior years, the Commission did entertain complaints and keep records of complaints; yet, some of the categories of complaints against brokers were not formally monitored by the Commission.

Since the beginning of 1986, at the initiation of the Chairman of the Commission, Mr. Gaillard's office has monitored directly the number of complaints that have been submitted to the Commission by entities complaining about broker activity. The problem with the notion of broker activity is that many of the complaints involve entities that are not subject to our jurisdiction and perhaps issues that are not directly subject to our jurisdiction.

However, I will say that the 610 complaints that we have documented are complaints that we deal with, that we try to resolve, that we do the best that we can with our resources to bring to an immediate resolution or take to the Department of Justice or other avenues.

The following table that shows that there are 610 complaints during fiscal year 1987. We monitor this daily. We tabulate these monthly, and we are trying to stay on top of the problem in terms of oversight and trying to resolve these issues as best we can.

[The table follows:]

OFFICE OF COMPLIANCE AND CONSUMER ASSISTANCE INDEX OF BROKER COMPLAINTS RECEIVED DURING FY 1987

| | Total | Active brokers | Others |
|---|---|---|---|
| Total complaints [1] | 610 | 162 | 271 |
| Total reasons [2] | 740 | 302 | 438 |
| Loss and damage | 12 | 9 | 3 |
| Collection of freight charges (shippers) | 15 | 6 | 9 |
| Failure to remit charges (carriers) | 378 | 186 | 192 |
| Matters related to brokers fees | 4 | 2 | 2 |
| Use of unauthorized motor carriers | 8 | 3 | 5 |
| Pricing practices contrary to tariff rates | 1 | 1 | 0 |
| Disregarding surety bond requirements | 74 | 28 | 46 |
| Unauthorized broker operations | 248 | 67 | 181 |

[1] Total Complaints: Identifies the number of complainants that contacted the Commission's Office of Compliance and Consumer Assistance (OCCA) and involved 162 active brokers and 271 other entities. Active brokers are those licensed to perform service. Others include unlicensed brokers, inactive brokers, brokers that had applications pending for approval and authorized more carriers without broker licenses.

[2] The categories identify the primary reasons for filing complaints. Note, that each complaint can have more than one reason.

DESCRIPTION OF COMPLAINT ITEMS

Loss and Damage: This generally relates to complaints in which the complainants encountered loss or damage to the cargo transported in service arranged by the broker and expect the broker to handle and/or settle the claims (brokers do not have this type of liability).

Collection of Freight Charges (Shippers): This generally relates to any type of complaint from shippers concerning the payment of freight charges to brokers.

Failure to Remit Charges (Carriers): This generally relates to complaints received from motor carriers/owner-operators concerning the failure of brokers to remit to them payments of freight charges collected from shippers.

Matters Related to Broker Fees: This generally relates to complaints received from any type of complainant concerning fees assessed by brokers.

Use of Unauthorized Motor Carriers: This generally relates to complaints from other brokers or carriers that the underlying service arranged for by the broker was provided by an unauthorized motor carrier.

Pricing Practices Contrary to Tariff Rates: This relates to any type of complaint that brokers in control of freight shipments specify to carriers the amount it will pay motor carriers for line-haul transportation services notwithstanding published rates of the carriers.

Disregarding Surety Bond Requirements: This generally relates to complaints that brokers operate without maintaining an active surety bond required by Commission regulations.

Unauthorized Broker Operations: This generally relates to broker operations that require a license issued by the Commission.

The testimony further points out that the most frequent complaint involved the failure of the licensed and unlicensed brokers to remit to motor carriers freight charges collected on behalf of those carriers. This is a very common problem for brokers and

truckers, in particular with truckers' relations with owner-operators.

The number, though, is not excessive relative to the number of brokers and the volume of traffic they handle, and is generally comparable to the limited number of other complaints that we have received since 1980.

On the compliance side, briefly, our staff has engaged in several activities, including specific projects conducted in various sectors of the country, to determine whether brokers are using unauthorized transportation and whether brokers have adequate surety protection.

If either problem is encountered, we use our enforcement mechanisms.

In summary, there is one thing that I would like to point out for you, Senator Exon. There is one case that has been of interest to you and your constituent, Mr. Antholz. It involves a Grand Jury investigation concerning brokering practices in Los Angeles that came to our attention and was brought by the Commission to the Department of Justice.

While I understand that the Grand Jury has not completed its work, on October 22, 1987, one individual, Mr. Frank Serrati, Jr., was indicted on six counts of bankruptcy, fraud, and improperly attempting to hide assets.

This concludes the Commission's testimony. I will be happy to address any questions you might have.

[The statements follow:]

STATEMENT OF VICE CHAIRMAN LAMBOLEY

The Commission has declined to open investigation into certain broker related practices. I disagree with those decisions.[1]

In my view, the investigation issues are fairly straightforward. An investigation would enable the Commission to asses the scope and frequency of alleged broker abuses, and determine what if any remedial measures would be appropriate. Quite apart from the sample evidence to support investigation, the broker industry should benefit by such a proceeding.

If as brokers contend, the alleged problems prove to be relatively few, only limited Commission action may be necessary. If, however, as some others contend, such practices are more widespread, a broader Commission response may be fashioned. In either circumstance, responsible investigation would serve to define problem areas and adjustments. Such report would no dobut clarify and enhance the brokers' professional status and credibility.

By contrast, I believe that in the absence of appropriate investigation, many conclusions concerning the broker industry offered by current testimony lack foundation.

Finally, in my judgment the recent proposal to exempt change in control of broker authority is ill-conceived. I see no reason at this time to eliminate regulatory approval to change in control of brokers, i.e., a parallel method of acquiring broker authority.[2]

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COMMENTS OF COMMISSIONER SIMMONS

I do not believe that the Commission has sufficient information on the current practices of property brokers to support the majority's conclusions. For this reason,

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[1] See No. 39963, *Senn Trucking Company—Lawful Practices of Property Brokers—Petition for Rulemaking*, I (not printed) served November 17, 1986 and II, (not printed) served May 20, 1987. (Commissioner Lamboley dissenting opinions)

[2] See Ex Parte No. MC-111 (Sub-No. 1), Transfer Rules (not printed) served October 23, 1987.

I favored seeking comments on conditions in the industry. Please see my separate expression in No. 39962, which follows:

I would not have denied the petition at this stage. In my view, petitioner Senn Trucking has raised issues of sufficient seriousness to warrant the Commission's further consideration. Similar issues have been brought to the Commission's attention by at least one member of Congress. The specific remedies proposed by Senn may or may not be overly broad, but this is no reason to dismiss its concerns completely. I would have sought additional comment on the problems identified by Senn and on potential solutions.

Various reasons given by the majority for denying the petition can only be termed disingenuous. The same Commissioners who suggest referring problems to our Office of Compliance and Consumer Assistance restricted our enforcement efforts by voting for the recent closing of one half the Commission's field offices. The reference to the Freight Forwarder Deregulation Act of 1986 is also misplaced. Action on the Senn petition was delayed because of the possibility that this legislation would include provisions to deregulate brokerage activities. The legislation which was passed did *not* include any such provisions, so the inference drawn by the majority with respect to Congressional direction is clearly unwarranted.

[The following information was subsequently received for the record:]

QUESTIONS OF SENATOR PRESSLER AND THE ANSWERS

*Question* 1. Assuming I wanted to become a licensed broker, what ICC criteria would I need to meet in order to be eligible for a license?

Answer. Under the statute, a person may operate as a broker arranging for the interstate transportation of property only if it holds an appropriate license issued by the Commission. *See* 49 U.S.C. 10921. Under 49 U.S.C. 10924, the Commission must issue a license authorizing a person to be a broker arranging for the transportation of property (other than household goods) if the Commission finds that the person is fit, willing, and able to be a broker and to comply with the statute and applicable regulations. When a person seeks a license to be a broker for the transportation of household goods, the commission must make the above findings and, in addition, find that the proposed transportation will be consistent with the public interest and the transportation policy of 49 U.S.C. 10101.

Protests may be filed on fitness grounds and also on public interest grounds in the case of household goods brokers. In the event of protest on either ground, the agency decides whether the statutory criteria have been met.

Before the Commission issues the broker license, the applicant must have on file with the Commission an approved surety bond. The license remains in effect only as long as the broker remains in compliance with the bond requirement. *See* 49 U.S.C. 10927(b). Additionally, as a condition to the issuance of the license, an applicant must designate agents for the service of process. *See* 49 U.S.C. 10330. Commission regulations concerning the surety bond and designation of process agent requirements appear at 49 CFR 1043.4 and 49 CFR 1044, respectively. Regulations currently require that a surety bond or alternate security for $10,000 be maintained.

*Question* 2. What would the Commission require from me once I receive a broker license? For example, I would need to post a $10,000 bond. What else is required?

Answer. As noted, the Commission requires a property broker to file with the Commission a surety bond for $10,000, or other security or agreement approved by the Commission, 49 CFR 1043, and a prescribed form (BOC–3), which shows the names and addresses of persons upon whom service of process can be made in each state in which the broker is authorized to engage in broker operations (49 CFR 1044).[3] Property brokers are also required to comply with other Commission regulations regarding such matters as the cancellation and replacement of Surety Bonds (49 CFR 1043), and cancellation or change of Process Agent Agreements (49 CFR 1044).

The holder of a broker license is also subject to record keeping requirements specified at 49 CFR 1045. That section contains regulations regarding records brokers must keep, permissible compensation methods, general duties and obligations, and accounting requirements. This section was adopted pursuant to the authority of 49 U.S.C. 11144.

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[3] The bond requirement is an indicia of financial stability. DOT does not rate brokers on safety because they operate no equipment. The Commission's practice of limiting motor carrier authority to safe carriers ensures that brokers use safe carriers.

Beyond this, under current regulations, at 49 CFR 1181.32, if a broker wishes to transfer its license, a transferee must file with the Commission an application containing proof that it is fit, willing, and able to perform the duties of a broker and that the transfer will not be contrary to the public interest. Similarly, when there is a change in the control of a corporation holding a broker license, an application must be filed describing the change and offering proof that the change is not contrary to the public interest. These regulations were adopted pursuant to the authority of 49 U.S.C. 10321. The Commission has initiated a proceeding in which it proposes to revise its review of broker control transactions. *See* Ex Parte No. MC-111 (Sub-No. 1), *Transfer Rules* (not printed), served October 23, 1987. To the extent this proposal addresses brokers, it proposes generally to align the transfer rules with the statutory criteria for new applications (*i.e.*, it should not be more difficult to transfer a license than to obtain a new one).

*Question* 3. I understand that the ICC received 610 broker complaints during fiscal year 1987. Are the number of complaints increasing from previous years? Could you provide us with a summary of the number of complaints the Commission has been receiving since deregulation?

Answer. A summary of complaints by year since regulatory reform legislation was adopted in 1980 is shown below:

| Year: | *Number complaints* |
|---|---|
| 1980 | 70 |
| 1981 | 66 |
| 1982 | 52 |
| 1983 | 66 |
| 1984 | 52 |
| 1985 | 69 |
| 1986 | 49 |
| 1987 | 610 |

The figures for each year from 1980 through 1986 shown above reflect only jurisdictional complaints against licensed brokers which fall within one of four categories, e.g., (1) Claims Handling, (2) Rates and Charges, (3) Service, and (4) Owner Operators. The figures show only modest fluctuation between 1980 and 1986. The 1987 complaint figure is much higher than any previous year because of a special data gathering program that was implemented on October 1, 1986. The program recorded all jurisdictional and nonjurisdictional complaints involving licensed and unlicensed brokers regardless of whether the traffic was regulated or unregulated. (see attachment). The purpose of this special program was to capture any available data that would be helpful in developing as broad a picture of brokerage problems as possible. The data was captured under eight categories including (1) Loss and Damage, (2) Shippers Complaints Regarding Freight Charges, (3) Failure to Remit Charges to Carriers, (4) Matters Related to Brokers Fees, (5) Use of Unauthorized Motor Carriers, (6) Pricing Practices Contrary to Tariff Rates, (7) Surety Bond Violations, and (8) Unauthorized Brokerage.

Although the 1987 complaints are much higher, a large portion of the increase was in the unlicensed broker area, and also in the category entitled "Failure to Remit Charges" to carriers. Historically, the Commission has viewed the settlement of charges between carriers, as well as between brokers and carriers, as administratively nonjurisdictional. This rationale is predicated on the belief that the overriding legislative intent in this statutory area was to protect shippers from carriers and brokers, and that established day-to-day business practices would suffice to resolve disputes between carriers and brokers. Consistent with this view, the Commission has not promulgated regulations that apply to the settlement of charges. Therefore, discounting the statistics relating to "failure to remit," the only significant increase in 1987 was in the relatively narrow areas of "Unauthorized Broker Operations," and in the newly listed category of "Disregarding Surety Bond Requirements."

*Question* 4. Would you please explain the steps taken by the Commission to resolve the complaints concerning transportation brokers?

Answer. Complaint handling procedures vary depending on the category of the complaint. Shipper complaints involving such matters as service, fees, charges, and loss and damage of goods are handled with the brokers in order to obtain satisfactory solutions to the problems. We also caution brokers not to use unauthorized motor carriers for the routing of traffic controlled by the brokers. Complaints involving unauthorized brokerage are referred to the Commission's compliance personnel to inquire into and bring about a curtailment of such practices. When unau-

thorized activities are discovered, the Commission's application process is explained, and the violator is encouraged to apply for a broker's license. Complaints involving departures from tariff rates are handled with the brokers for correction, but these incidents can be subject to field investigations. Although viewed as administratively nonjurisdictional, complaints received from motor carriers concerning delayed remittance of freight charges collected by brokers are handled by the field staff when it appears that an informal resolution is possible. Other situations may necessitate advice to proceed against the brokers' surety bond, or to seek appropriate court remedy.

Where the scope or pattern of complaints may involve possible violations of the Interstate Commerce Act as well as other laws, state or Federal, a variety of actions may be taken. For example, our staff has referred broker complaints to state and Federal investigatory agencies, such as the state Police and the FBI. When complaints involve serious criminal allegations, such as wire or mail fraud, referrals are made to the Department of Justice, and continuing investigative and attorney support is provided by the Commission throughout the grand jury process and trial stage if necessary.

For the benefit of the Committee, we would like to provide an update on the Grand Jury action against a Mr. Frank Sarate mentioned in the Commission's oral presentation. On November 30, 1987, Mr. Sarate entered a guilty plea in a case that arose as a broker fraud investigation in the Los Angeles area and developed into a Grand Jury indictment for bankruptcy fraud. Sentencing was set for January 4, 1988.

Senator EXON. Thank you.

Since Mr. Gaillard is directly involved in this, if he has any statement or anything that he would like to add to the testimony you have just given, I would be glad to recognize him at this time.

Do you have anything to say as of now, Mr. Gaillard?

Mr. GAILLARD. Thank you very much, Senator. I think Mr. Hennigan has covered most of the testimony that we have. But I am free to answer any questions you may have.

Senator EXON. I know that you do not have any direct responsibility in going beyond the licensed brokers into the other agents that have cropped up in this general area. Do either of you have any specific information, or what are your views on potential problems for those who perform services identical to or similar to brokers that, as I understand it, are generally called "agents" or some other name?

Is that an area of concern? Or do you feel that there is not a real problem in the areas, the grey areas, beyond the licensed brokers?

Mr. HENNIGAN. Senator, the functions that they perform are very similar to brokers. I think history would show, for example, that since 1980, with respect to rail trailer on flat car traffic, shipper agents and other third party intermediaries have provided a phenomenally useful service to shippers in terms of finding capacity and moving trailers for shippers and also filling trailers, empty trailers, for motor carriers or railroads.

So, whether it is a shipper agent, a shipper association, a property broker, a freight forwarder, an agricultural co-op, or an exempt agricultural broker, they are providing the same, useful intermediary service, much like a real estate broker. They are pulling people together who want to buy and sell transportation services. They are doing it very, very efficiently.

The view of the Commission in Senn and other related cases is that we are only seeing isolated instances of abuse, relative to the volume of traffic and commerce that is going on. It would certainly be unfortunate in the case of brokers to in any way chill that useful purpose that is provided. And in the case of entities that are

exempt by law from our jurisdiction, I think that the experience since 1980 would show that the abuse is rather limited and that self-help mechanisms and contract law, which is the basic law that guides these transactions, is a more prudent defense.

Senator EXON. My question had to do, Mr. Hennigan, with whether or not you see any problems in the agents' duties, given and granted that they provide a very useful service. Do you have any indication that there are abuses? Are there abuses that have been called to your attention, whether you have authority over them or not, with regard to agents, as opposed to licensed brokers?

Mr. HENNIGAN. Yes, sir. We do not think the problem is that severe, but there have been cases that have been brought to our attention.

I understand that part of the problem in the Grand Jury investigation involving Mr. Serrati involved allegations of him actually being a shipper agent, which is, by law, outside of our jurisdiction.

These complaints do come to us. We try to assist as much as we can. To answer your question, we are aware of problems.

Senator EXON. I take it, Mr. Hennigan, that the general thrust of your testimony here today is that, at least from an ICC perspective, doing the monitoring that you were doing on this under the responsibility charged to the ICC under the act, while there have been some abuses, as there always will be, the benefits that have accrued to the industry as a whole, and especially shippers, are so overwhelming that any abuses that have taken place, while unfortunate, are miniscule and that it could best be handled by a "let the shipper beware" attitude, as is customary in a large part of our free enterprise system.

Now I am not trying to put words into your mouth, but I am trying to get a layman's understanding of what you are saying.

Mr. HENNIGAN. The complaints certainly are limited relative to the benefits. With respect to the complaints, it is the Commission's testimony that every complaint that is received is resolved to the best that we can. So, while it is certainly good advice in terms of freight brokers or other entities that the shipper should beware, this Commission is certainly willing and able to help in any way to resolve these difficulties. Our testimony details how we have resolved broker complaints and protected shippers and carriers from abusive practices by brokers.

So we are willing and able, to the extent that we can, to help and assist in solving these problems, to the extent that assistance is necessary and probelms are brought to our attention.

Senator EXON. To follow through on that, what you are saying, if I understand you correctly, is that you believe that the present method of handling this, the reporting system, the monitoring that you and your staff are doing, are adequate to address the problems that now exist and that, while legislative oversight would be in order, you think no further laws or rulemakings are necessary at this time?

Mr. HENNIGAN. Yes, sir.

Since 1980, the complaints have gone down overall for the motor carrier industry. In 1987, when we are monitoring broker and motor carrier complaint activity, we find that the numbers are not increasing. They are decreasing, if anything.

So yes, sir, to your question.

Senator EXON. My time is up for this first round.

I am very pleased to recognize Senator Kasten.

Senator KASTEN. Mr. Chairman, thank you.

Let me just ask a further question along that line.

Is it your view that an in depth investigation of transportation brokerage by the ICC would not serve any purpose at this time? In other words, if you were instructed to put together an in-depth investigation of these questions, do you believe that that could serve a purpose or do you believe that that would not serve a purpose at this time?

Mr. HENNIGAN. The testimony indicates that the commission is perfectly willing and perfectly capable and able to resolve problems that do exist, and that there is not an overwhelming problem in the brokerage industry.

In addition, the Commission has twice in the last year voted not to reopen regulations with respect to property brokers. So the Commission has twice voted that it is not necessary to engage in a study, as you suggest.

Senator KASTEN. The largest broker association is the Transportation Broker Conference of America.

Mr. HENNIGAN. Yes, sir.

Senator KASTEN. They have, I am told, about 1,400 members. We have about 6,000 brokers that are in the business now, which would indicate that only a small percentage of the total group is actually in this association.

Does this suggest that we can not rely solely upon broker self-policing to control unethical broker practices and that we may have to do something in addition?

I don't know if you have had any contact with this association, and I also don't know how aggressively this association is trying to do self-policing among its members. But, even if it were, they are only covering 1,400 out of 6,000.

Mr. HENNIGAN. The Commission has had a lot of contact with the Transportation Brokers Conference of America. The decisions that we have written have encouraged their self-policing mechanisms. It is no secret that they are doing an excellent job, and you are right that it is not the entire brokerage industry.

But I would point out that we have only received 610 complaints with respect to 6,000 brokers, and as I think testimony today will indicate, 6,000 brokers representing perhaps $2 billion to $10 billion worth of freight traffic. We think that in terms of policing, that the services provided by these brokers is very significant to the economy, and that not just TBCA but each individual broker is interested in self-policing and in prospering in this industry, and that the volume of the market and competitiveness is providing a very effective mechanism to police these brokers.

Senator KASTEN. The thrust of a lot of the testimony that we have is, in a sense, that there are a lot of kind of "fly-by-night" people that get involved in this industry. My guess is that they would not be in that 1,400 that are part of this association. The testimony is talking about people getting into business, getting out of business, starting up in a different location, changing their phone numbers, just kind of basically always keeping one step ahead.

Implicit in this is that no one claim that one shipper would have to be big enough to go and pursue this in the courts. In other words, they are owed $2,000 or $4,000, and the person sitting back, as I understand it from just a brief review, is saying that we have just gotten ripped off but for us to hire a lawyer, for us to go through the trouble of finding these people, to track them back all the way through, probably is going to cost us more than this, so we are not going to go through that trouble.

Is that a fair analysis or description of the kinds of problems that are coming to you in the complaints that you are getting?

Mr. HENNIGAN. That is a fair analysis of some of the limited complaints that we do receive. But I think the broader statements in the testimony that I have seen in our dockets and with respect to the testimony you have here is that these incidents are isolated, and the best protection, even with the ICC, is before you enter into these transactions where you surrender your freight, you check out the parties. You use standard commercial business practices.

Now, that certainly does not relieve the ICC of the responsibility, which we fully accept, to monitor and remedy problems. But I would point out that in 1977 and going back further, these same entities existed and the same problems existed in an era of really tight regulation. And, in fact, the problem was worse in the sense problems persisted even when there were very few trucking companies and the Commission could monitor these things very closely.

Now, with the proliferation of trucking and brokerage companies, the sheer number of the market and the sheer size of alternatives makes doing business much easier and much more competitive and efficient.

So the instances that you cited are typical of the worst cases and they are limited. These are the types of things that we take to the Justice Department and for which Grand Juries are called to try to resolve. They are not easy.

Senator KASTEN. If this is the case, has the ICC looked at the possibility of increasing that $10,000 broker's bond? Have you considered that?

I am not even sure if that is a decision that the ICC has made or that the Legislature has made or how we have arrived at the $10,000 figure. But in some of the testimony here, it is suggested that that $10,000 bond is not really worth much in terms of protecting either the shippers or the carriers.

They bring up the fact that the dollar amount is too low, and they also bring up the fact that a significant portion of the claims involved unlicensed intermediaries, which are not covered by this $10,000 bond, as I understand it.

So, first of all, would the ICC recommend that we broaden the coverage of the $10,000 bond or of a bond to these unlicensed intermediaries—broaden the bonding coverage? Secondly, is the $10,000 figure a reasonable one, or should we increase it significantly, which might have the effect of taking out of the business some of the, for lack of a better word, "fly by night" people who are starting up and stopping and switching their phone numbers?

Have you looked at that question?

Mr. HENNIGAN. Yes. I am not sure the Commission has resolved whether it should be more than $10,000. It has been presented to us.

Along those lines, the concern about a $100,000 surety bond, for example, is, first of all, perhaps one-third of the brokers right now are having difficulty getting a $10,000 bond—not because of the brokerage industry but because of the surety industry. That is why this Commission had to go to alternatives in lieu of surety.

The problem with the $100,000 bond is that the broker would have to post, as I understand it, $100,000. This is an economic barrier to entry.

The 1980 act tried to remove those sorts of barriers to entry. We are always interested in matters such as safety, but imposing additional barriers to entry would be counterproductive.

Senator KASTEN. But you could make the same argument for the $10,000 bond, that it is an obstacle to entry also.

Mr. HENNIGAN. It is. But $100,000 is an obstacle for many more entrants.

Senator KASTEN. It is a bigger obstacle, yes, and I am not saying that it should go to $100,000. Maybe it should go to $200,000 or maybe it should go to $20,000. I don't know.

Mr. HENNIGAN. Again, you would be eliminating a lot of good brokers in imposing such a high surety requirement, not just bad carriers.

Senator KASTEN. So you have looked at that question——

Mr. HENNIGAN. Yes we have.

Senator KASTEN [continuing]. And tentatively felt that the $10,000 figure was acceptable?

Mr. HENNIGAN. We have retained the $10,000 amount.

Senator KASTEN. Can you answer the other half of my question.

Mr. HENNIGAN. In terms of the complaints that we have received, Senator, some of them are for unauthorized operations, and just like motor carriers, what this Commission tries to do is to educate carriers on how easy it is to get authority and be legal. So, what we do is try to get them to get authority, brokerage authority, and, in addition, get the surety bond requirement. The testimony indicates that a lot of our activity is to get carriers to stop operating illegally and get authority and get insurance.

So, the way we deal with unauthorized brokers, is to get them legitimate and to get the bond there.

Senator KASTEN. My time has expired.

I think that the only question I would hope, Mr. Chairman, some time today we could get an answer to is whether or not the problem is accurately reflected by the number of complaints that you received. I just wonder if there are not some people out there who, for any number of reasons, have not gone through the formal complaint process with you, just as evidently there are a number of people who have not gone through the formal legal process, to go out there and get the $1,300 that they have lost. I mean, at one point the trouble of dealing with you guys is almost as difficult as the problems of dealing with the courts, and people just kind of shake their heads and say, you know, we will go on and, hopefully, I won't get burned again, I won't use this guy. I will try over here

and I will try to check him out a little bit more, as you are suggesting.

Do you have any way of answering that question?

Is your number of complaints a fair indicator? That would be why we would ask you to do an investigation.

Mr. HENNIGAN. By just collecting these complaints, we have a very good pulse on what is happening in this industry, and the complaints have gone down considerably since 1980.

We do not think that it is because people believe we have turned off to them. We do think that it is because there are many, many other alternatives out there and that dealing with bad actors is something to be avoided; and that, while there are complaints, the reason they don't come to us is, number one, they can resolve problems themselves much more efficiently, which is fine; or that those problems just are not there.

There are problems, but I think they are being resolved and we are helping just as much as we can.

Senator KASTEN. Thank you very much for your testimony.

Senator EXON. To follow up on this bond proposition, Mr. Hennigan, I am certain that we require the truckers to carry very heavy protective insurance with regard to liability, probably in the $200,000 to $500,000 range.

Do you honestly believe that $10,000, which appears to me to be a very limited bond, adequately protects the public at large as far as these operations are concerned?

Mr. HENNIGAN. First of all, the truckers do have as little as $750,000 liability insurance, and if a broker uses a trucker, which they would have to do, then the underlying trucker would have the liability and cargo insurance.

So the surety bond for the broker merely goes to the performance of the transaction.

Senator EXON. I understand that, Mr. Hennigan. I did not want your explanation of that.

I understand that there is a difference in that. The only thing I was pointing out is that we require carriers, and I think properly so, to carry very high limits of liability insurance in case of accidents.

I was just trying to draw the comparison between that figure and the $10,000, which is what we require for people to get involved in this business.

It sounds low to me. Maybe I am wrong.

Mr. HENNIGAN. Well, it is a minimum.

Now, I really do not know—we don't have statistics—but I would not be surprised if brokers don't have surety bonds or insurance policies of sorts way beyond $10,000, depending on their size and the volume of their transactions.

But the legal requirement is only that they have a $10,000 level of protection. It is an expensive requirement for a small carrier going into the brokerage business. You basically have to set aside $10,000 of cash or assets to get that bond.

Senator EXON. Do you mean they have to set aside $10,000 to get a $10,000 bond?

Mr. HENNIGAN. Yes, sir.

The nature of a surety bond is a fixed penalty bond. It is a difficult instrument to get right now, but it is our understanding that it more or less costs you $10,000 for the $10,000 protection. The surety agent is not going to be liable for your actions.

Senator EXON. In other words, there is not any such thing as a surety bond, then, is what you are saying. Is that right?

Mr. HENNIGAN. It is a $10,000 set-aside, which is kind of what it comes down to. That is why the Commission has attempted to look at other ways that a broker could guarantee at least $10,000 of protection to the public.

Senator EXON. So what you are telling me is that the insurance agencies, the bonding agencies who provide this protection, are not looking at this as traditionally we have looked at surety bonds. They would charge a premium for the bond based upon the net worth and the previous experience with their bond holder. Is that right?

Mr. HENNIGAN. Let me pass this to Mr. Gaillard.

Mr. GAILLARD. That is correct, Senator.

Unlike the insurance company, the surety never expects to pay a dime out of its pocket. It expects the broker to pay it. That is why that $10,000 is minimum, but it is important. It is an important figure. That is why $100,000 would be difficult. You would wipe out the good brokers along with the bad ones. I don't know of what benefit that would be.

Senator EXON. Let me ask you two or three more questions and then I think we will probably have finished with this panel.

Mr. Henry Seaton, who is scheduled to testify later this morning, has stated in his prepared testimony that there is a high turnover rate among licensed brokers. He states that, during a recent five week period, some 200 new brokers were added and 189 brokers were deleted, amounting to an annual turnover rate of 33 percent.

Do you agree with these figures? If so, what sort of regulatory control can or should the ICC reasonably exercise over an industry which is this fluid?

Mr. HENNIGAN. Well, I certainly have no reason to dispute his figures.

It is true in American business in general, that small businesses have a very difficult time surviving. This same issue comes up in the trucking industry, where there has been a tremendous number of new entrants.

In addition to that, one of the problems that we raised is the difficulties with surety bonds. Of the 6,000 carriers that are licensed, not all 6,000 are currently operating because they cannot get a surety bond.

In addition, this certainly is a fluid industry, where advice like "shipper beware" really has a toll for brokers. I mean, surviving in the brokerage industry in a competitive environment comprised of truckers, private carriers and shippers is very, very difficult for anyone. It is not surprising that some brokers don't survive. It is just encouraging that brokers and other third parties can provide this service in a competitive industry and do survive and move the amount of freight that they do.

Senator EXON. I will have to leave for a few minutes and run over to vote. But I will be right back.

Let me see if I can wind up here with you in the next few minutes so that when I return we can begin with the next panel.

The ICC's prepared testimony notes that the Commission is now accepting the establishment of trust funds from brokers as an alternative to surety bonds.

Can you comment further on this?

Has any consideration been given to requiring the funds relating to each particular transaction to be placed in escrow accounts to insure payment?

Mr. HENNIGAN. We are taking comment on this because, in lieu of this surety instrument, we are trying basically to allow for self-insurance. That is what this is, very much like liability self-insurance.

But, unlike liability self-insurance, we have to guarantee that a broker does have money set aside. So what we are trying to fashion are alternative instruments. We have allowed, as you mentioned, a trust fund. We are taking comments on other instruments and certainly would be interested in allowing them, if we can structure an instrument that will protect the public.

Your suggestion about a set-aside for each transaction I guess is something that was part of our consideration. But the surety is just a fixed, $10,000 amount. The law or regulations only require that an amount be set aside, not an amount per transaction.

Mr. GAILLARD. Senator, what we have tried to do on that side of it is to build in the trust instrument a replenishing feature, so that if $5,000 of that bond is used up, the broker is required to replenish to $10,000 within 30 days.

Senator EXON. We may have some other questions for the record and we may write to you and would ask that you respond promptly.

My last question now is this. At least I understand that the ICC rules require shippers to pay carriers for services rendered within 15 days. Are brokers required to pay carriers within a similar period of time?

What enforcement mechanisms exist in this area?

Mr. HENNIGAN. A broker, as an agent for the carrier, is liable to the same rules as the carrier. I am not sure that if that is in the Senn Decision or others. But they stand in place of and are subject to the same rules.

Senator EXON. I think you get the general thrust of my question, and I would ask that if you have any further information on this, it might be helpful to us, Mr. Hennigan, if you would submit that for the record. We would appreciate it very much.

Mr. HENNIGAN. We would be happy to do so.

[The following information was subsequently received for the record:]

The Commission's regulations (49 CFR 1045) recognize that licensed brokers may perform brokerage service and non-brokerage service on behalf of a motor carrier, consignor or consignee. This could include collection of freight charges on behalf of a motor carrier which would be a non-brokerage service. When brokers act on behalf of a person bound by law or Commission regulation as to the transmittal of bills or payments, the broker must also abide by the law or regulations which apply to the person. (49 C.F.R. 1045.10). Unless motor common carriers establish credit periods by tariff, the Commission's rules require carriers to collect freight charges within 15 days of the presentation of the freight bills. Brokers, acting on behalf of a

carrier, would be bound by these same requirements. Brokers are also required by regulation, 49 C.F.R. 1045, to maintain records of any freight charges collected and the date of payment to the carrier; but there are no time requirements governing when payments must be passed through to the carriers.

In the event the broker itself is the shipper, the motor common carrier is bound to collect the freight charges within the established credit period.

Senator EXON. We now stand in recess temporarily. I will return in about six or seven minutes, and we will continue this hearing.

[Brief recess.]

Senator EXON. The subcommittee will please come to order.

I am pleased to call now panel number one: Mr. Robert Antholz, President of Canadian Pacific Transport, Inc., Pawnee City, Nebraska; Mr. Henry Seaton, on behalf of the Ad Hoc Committee to End Broker Abuses; Mr. Thomas Kretsinger, President of the American Central Transport; and Mr. John C. Fudesco, on behalf of the Pennsylvania Truck Lines.

Gentlemen, would you please take your places at the witness table.

I want to welcome each and every one of you. I know that many of you have come great distances to be with us this morning. That is particularly true of Mr. Robert Antholz, of Pawnee City, Nebraska.

We will start out the testimony with Mr. Antholz. He has been referred to previously in these hearings and probably is one of the reasons, one of the main reasons, that we are holding this hearing today.

Mr. Antholz, I want to welcome you.

As I have said earlier, your complete written statements will be accepted for the record. We would ask for you to summarize. I would be glad to extend you any additional time that you might need as a good Nebraskan to praise the Nebraska football team, but I do hope that you will be somewhat restrained in that area, given the sensitivity of the Senator from Wisconsin with regard to football these days.

I would simply say that anything you have to say about the football team will not be regarded, at least by this Chairman, as bragging, but rather as a statement of fact.

With that introduction, I am glad to welcome you here this morning, and thank you for your input.

## STATEMENT OF ROBERT ANTHOLZ, PRESIDENT, CANADIAN PACIFIC TRANSPORT, INC.

Mr. ANTHOLZ. Thank you, Senator Exon.

My name is Robert Antholz and I reside at Route 2, P.O. Box 42, Pawnee City, Nebraska, a town of 1,156 inhabitants located in southeastern Nebraska.

Senator EXON. Would you pull the microphone a little closer, please, so that we can hear you better.

Mr. ANTHOLZ. Yes. I am in the trucking business, operating as a for-hire motor carrier that transports property over irregular routes in interstate commerce pursuant to authority issued by the Interstate Commerce Commission. As a Federally regulated motor carrier, I must and do adhere to ICC and the Department of Transportation regulations, such as but not limited to: safety of oper-

ations; mandated cargo and liability insurance for protection of the public; tariff requirements as to rules and rates; designation of agents for service of process; and ICC accounting responsibility.

I am a small motor carrier, and my business is titled Canadian-Pacific Transport. I have four heavy-duty diesel tractors, and four trailers which are used in interstate commerce to conduct business operations. I have about $400,000 tied up in equipment.

My operations are typical of the scope and size of many thousands of Federally regulated for hire motor carriers through the country. I must work long hours and my profit margins are very small.

In 1980, Congress reregulated the motor carrier industry. They did not deregulate it. They reregulated it. Motor carriers must still obtain authority from the ICC to operate and they are still subject to a myriad of regulations.

Basically, under the 1980 legislation, the existing motor carriers broadened their base of operations, by expanding from specific transportation of designated commodities and specific territories to transportation of commodities in general between points in the United States. Further, thousands of new entrants under eased entry rules likewise obtained broad grants and entered the regulated for-hire motor carrier field.

If a broker would get the shipper and carrier together whereby the shipper would pay the carrier the gross revenue less the broker's fee for the transportation and then pay the broker its fee, I believe the system might work. However, the broker is reluctant to relinquish this economic control.

On most broker loads, the broker bills the shipper for the entire freight charge and the shipper pays the broker. The dishonest broker then refuses to pay the motor carrier anything.

This forces the carrier to sue the broker, who is usually judgment proof. In addition, the carrier is heavily burdened with attorney fees and loss of time trying to obtain the accounts receivable owed to the transportation broker.

I would highlight some of the specific problems that I have encountered with ICC licensed brokers.

In January of 1984, I hauled two loads, about $3,000, in freight charges for a broker in Los Angeles. This broker drifted from Los Angeles to Oregon. He was licensed and bonded. He was judgment proof, though, and I lost the entire amount of transportation charges. This broker was licensed and bonded, but the bonding company refused to pay off. They said they had to find the broker and they could never find him.

In 1983, I hauled four loads for a broker who, I have since discovered, has used 17 different broker's names. I lost $10,000 in freight charges, which are now the subject of a bankruptcy proceeding. In that proceeding, motor carriers and railroads lost a total of $4.4 billion with this broker's nonpayment of freight charges.

I wrote a letter to one of the shippers regarding my freight in this matter and this broker had used three different names in moving loads for the same shipper. I stated to the shipper that the debtor was a dishonest broker who did not pay his bills. The shipper gave the letter to the broker, who sued me for slander in the amount of $4 million.

I paid a lawyer in Los Angeles $2,700 in fees. He won my slander case, but I am still out $10,000.

I joined a trucking company in Los Angeles in filing suit against this broker. We fought him through courts. We fought his Chapter VII bankruptcy, and he was the one that was recently arrested for perjury.

None of us has still been paid. My friend who took the case in Los Angeles is out about $60,000 in lawyer's fees, pursuing this one broker.

In November, 1985, I transported three loads of products through a broker in Grapevine, Texas. After five months of collection activity, I was able to recoup 80 percent of the accounts receivable.

In December of 1986, I transported two loads, moving from Los Angeles, California, to Charleston, South Carolina. The broker billed the shipper, United Partitions Systems of California, the line haul charges plus $36 per hour detention. That tied up the truck for three days on one load.

My detention was filed at $18 per hour. The shipper contacted me direct and instructed me to bill him. The broker had billed this shipper for $36 an hour detention.

The shipper settled with me direct.

In closing, I would respectfully request that Congress pass the necessary legislation to protect the Nation's motor carriers from the dishonest broker. If possible, I believe the best solution would be to make the shipper or receiver responsible for the carrier's freight charges less the broker's fee. This could be accomplished by mandating that in broker transactions, the motor carrier shall be named as the carrier on the bill of lading, which places the onus for paying the freight charges to the carrier on the shipper.

The ICC was talking about these bonding companies. I am having a terrible time to get most bonding companies to even pay, even though you can prove that you have delivered the load, the freight is delivered in good shape and everything. Most bonding companies will invite you to sue. If they do pay, you are talking about eight months to a year.

Thank you.

[The statement follows:]

STATEMENT OF ROBERT ANTHOLZ

My name is Bob Antholz, and I reside at Route 2, P.O. Box 42, Pawnee City, Nebraska, a town of 1,156 inhabitants located in southeastern Nebraska. I am in the trucking business, operating as a for-hire motor carrier that transports property over irregular routes in interstate commerce pursuant to authority issued by the Interstate Commerce Commission (ICC). As a federally regulated motor carrier, I must and do adhere to ICC and the Department of Transportation (DOT) regulations, such as but not limited to: safety of operations; mandated cargo and liability insurance for protection of the public; tariff requirements as to rules and rates; designation of agents for service of process; and ICC accounting responsibility.

In other words, the federal statutes and regulations as they pertain to motor carriers like myself are pervasive for the protection of the public. On the other hand, a healthy, sound for-hire motor carrier transportation system is also in the public interest so that consignors, consignees and all consumers throughout the United States receive their goods with prompt dispatch. A motor carrier cannot remain viable if its freight bill accounts receivables are uncollectable.

I am a small motor carrier, and my business is titled Canadian-Pacific Transport, Inc. I have four heavy-duty diesel tractors and four trailers which are used in interstate commerce to conduct business operations. My operations are typical in scope

and size of many thousands of federally regulated for-hire motor carriers throughout our country. I must work long hours, and my profit margins are small.

In 1980, Congress re-regulated the for-hire motor carrier industry. They did not de-regulate it—they re-regulated it. Motor carriers must still obtain authority from the ICC to operate, and they are still subject to a myriad of regulations for public protection, including DOT safety jurisdiction. I will not unduly burden this Committee with a dissertation of "what's new since 1980," because Senator Exon and other distinguished members of this Committee are familiar with the authority they delegated to their agent (the ICC) and what the agent has accomplished pursuant to Congressional mandate. I speak here of the scourge that has descended upon us in the form of the dishonest broker operating pursuant to a broker's license issued by the ICC.

Basically, under the 1980 legislation, the existing motor carriers broadened their base of operations by expanding from specific transportation of designated commodities and specific territories to transportation of commodities in general between points and places in the United States. Further, thousands of new entrants under eased entry rules likewise obtained broad grants and entered the regulated for-hire motor carrier field. This, of course, was the legislative intent of increased competition or participation in moving the Nation's freight via the motor carrier mode. The result of eased entry under the Transportation Act of 1980 has been increased competition by the existing and new entrants transporting full truck loads of property over wide geographic areas. In order to obtain a return haul (or head haul, as the case may be), motor carrier brokers have flourished.

Brokers, who are usually located in close proximity to the shipper base, have shipper contacts unknown to small carriers, and these brokers arrange for loading of these motor carriers' empty vehicles for a percentage of the gross revenue from the hauls. This is a convenience for the carrier like myself in that the carrier does not have the expense of hiring numerous sales personnel or maintaining extensive sales departments to solicit and obtain loads for their equipment emptying in vastly broadened territories. This is good for the broker in that the broker can realize revenues from its shipper contacts by utilization of the available motor carrier equipment.

If a broker would "get the shipper and carrier together," whereby the shipper would pay the carrier the gross revenue less the broker's fee for the transportation and then pay the broker its fee, I believe the system would work. However, the broker is reluctant to relinquish this economic control, fearing that the carrier will "go behind the broker's back" and obtain the loads directly from the shipper once the shipper is known to the carrier.

On most brokered loads, the broker bills the shipper for the entire freight charge, and the shipper pays the broker. The dishonest broker then refuses to pay the motor carrier anything. This forces the carrier to sue the broker, who is usually judgment proof. In addition, the carrier is heavily burdened with attorney fees and loss of time trying to obtain the accounts receivable owed for the transportation moves. It is true that a broker cannot receive a broker's license from the ICC unless the broker furnishes a performance or security bond. However, under the ICC regulations set forth in 49 CFR 1043.4, the designated amount of $10,000 is woefully inadequate. That amount would not cover seven loads!

If the broker does pay the carrier, the shipper will not voluntarily pay the freight bills twice, and again, the carrier is burdened with the time and legal expenses of suing the shipper for freight charges the shipper has already paid to the broker.

I will now highlight some of the specific problems I have encountered with ICC licensed brokers:

(1) In January of 1984, I hauled two loads ($3,000) in freight charges for a broker in Los Angeles. This broker drifted from Los Angeles to Oregon, was judgment proof, and I lost the entire amount of transportation charges. The shipper was St. Regis Corporation and the product hauled was paper.

(2) In late 1983, I hauled four loads for a broker who, I since have discovered, has used 17 different names. I lost $10,000 in freight charges which are now the subject of a bankruptcy proceeding. In that proceeding, motor carriers lost a total of $4.4 million with this broker's non-payment of freight charges. I wrote a letter to one of the shippers regarding my frieght and in that letter I stated that the debtor was a dishonest broker who did not pay his bills. The shipper gave the letter to the broker who sued me for slander in the amount of $4 million. I paid a lawyer in Los Angeles $2,700 in fees, and he won the slander case for me, but I lost the $10,000.

(3) In November and December of 1985, I transported three loads of products through a broker in Grapeville, Texas. After five months of collection activity, I was able to recoop 80% of the account receivable.

(4) In December of 1986, I transported two loads, moving from Los Angeles, California to Charleston, South Carolina. The broker billed the shipper, United Partitions Systems of California, the line haul charges plus $36 per hour detention. My detention was only $18 per hour. The shipper contacted me direct and instructed me to bill him, saying he would pay me direct, because he was "tired of being lied to by brokers." The broker filed a complaint with the Transportation Brokers Conference of America (TCBA) which my attorney ultimately got dismissed. But since that time, I have had experiences with two brokers who are members of TCBA who will not load me.

In closing, I would respectfully request that Congress pass the necessary legislation to protect the National's motor carriers from the dishonest broker. If possible, I believe the best solution would be to make the shipper or receiver responsible for the carriers' frieght charges, less the broker's fee. This could be accomplished by mandating that in broker transactions, the motor carrier shall be named as the carrier on the bill-of-lading, which places the onus for paying the freight charges to the carrier on the shipper.

In addition, Congress can direct its agent, the ICC, to provide for a larger broker's security bond. In all due respect to the ICC, it gives little more than token scrutiny to the financial responsibility of the broker, if in fact it pays any attention at all. The honest brokers, who provide a valuable service for their shipper clients, should have no reason to insist that they handle the carrier's money. The broker should receive the broker's fee from the shipper, who can simply deduct the fee from the gross revenues owed the carrier. The shipper should have no legitimate concern in paying the carrier and not the broker, because it is in the shipper's interest to have a supply of vehicles to move its products, and this pool of equipment will not be available unless the carrier can collect its money.

It seems to me that the hard working, honest transportation broker in the United States would likewise desire that something be done to rectify this problem, because it is also in the broker's best interest to have available equipment. I want to make it clear that I am not here advocating elimination of the broker. The motor carrier system needs honest, responsible brokers. I am here, however, seeking a legislative solution to eliminate the abuses that exist.

I thank the Committee for allowing me to testify, and respectively request that it consider the totality of circumstances with a view to passage of the necessary, reasonable legislation to protect motor carriers from the unscrupulous broker who cannot or will not pay the carrier its legitimate freight charges.

Senator EXON. Thank you very much, Mr. Anholz. Your full statement will be accepted for the record, as will the statements of the rest of the panel. I will withhold questions until the rest of the panel have made their presentations.

Mr. Seaton, I am very pleased to recognize you at this time.

## STATEMENT OF HENRY E. SEATON, ON BEHALF OF THE AD HOC COMMITTEE TO END BROKER ABUSES

Mr. SEATON. Thank you, Senator.

My name is Henry Seaton. I am an attorney. For 14 years, I have represented small motor carriers in both inter- and State regulation questions.

My statement is submitted on behalf of the Ad Hoc Committee to End Broker Abuses. It has been endorsed by the Maryland Independent Truckers and Drivers Association.

The rapid proliferation of intermediaries in the trucking industry has caused chaos and the opportunity for abuse. There is, in fact, a revolving door existence among many intermediaries.

The abuses exist not only with ICC property brokers, but also with other middlemen, masquerading themselves as freight forwarders, carriers who pay brokers, shippers' agents and exempt brokers. The abuses are epidemic. They include intermediaries, who collect freight charges and fail to remit to carriers; unlawful freight claims adjustments; price gouging; adhesion contracts,

which do deny carriers access to the marketplace and stifle competition.

The victims of crooked and under capitalized intermediaries include carriers, independent owner-operators, shippers, honest intermediaries, lending institutions, and the public as a whole.

In an effort to quantify the problem in my prepared testimony, I abstracted 448 cases that I have handled in the past 18 months involving freight charge claims; 76.8 percent of those cases involved intermediary abuse, and the amount of money which was not paid to carriers exceeded $940,000.

My personal experience is just the tip of the iceberg. The number of under-capitalized intermediaries is truly staggering. One credit reporting service has identified several thousand intermediaries who have been reported by their members for failing to remit money.

The number of carriers who have been ripped off by a single intermediary is also large.

Attached to my testimony, I have provided some 14 instances which I think is really a parade of horrors of how the abuse actually works. In one case, a broker, who has taken bankruptcy in the State of Pennsylvania, filed a schedule showing that he owned 133 carriers a total of $333,000 and his sole asset was a $10,000 bond.

Also before the Committee is the testimony of John Halsey, who is an honest man, who worked for what must be termed a crooked intermediary. In his testimony, he shows how 200 carriers could be systematically deprived of over $800,000 by a middleman, who has since disappeared, and presumably none of the money is available to pay them.

Intermediary abuse causes the bankruptcy of carriers. I have attached and submitted to the Committee some 21 statements.[4] Several of those guys are in Chapter XI bankruptcy and they state that the reason for that is because of nonpayment.

The ICC does not appreciate the problem and the reasons for that are obvious.

First of all, carriers have long since stopped complaining to the ICC. There is testimony to that regard from particular carriers.

There is also testimony that we have submitted a statement from an ICC district supervisor who says he has been forced to tell carriers that the ICC can do nothing for them. After presenting the claims and recognizing the deregulated status that we have now, carriers simply do not complain to the ICC. So their statistics, we submit, are invalid.

The remedial efforts by the ICC and trade organizations to solve the problem are inadequate. The broker's bond is a joke. It is a joke for several reasons.

First of all, it does not purport to include many of the intermediaries who are out there in the industry. Secondly, it is far too little. Most times when you have a broker claim, there will be $100,000 looking for a $10,000 bond.

Thirdly, insurance companies typically do not know who to pay, so they interplead this $10,000 bond in the most convenient court.

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[4] See p. 82.

At that point, you have a lawyers' convention in California to determine who should receive the money.

There are five large insurance companies who simply say they will not pay carriers. It is hard for a lawyer to sue an insurance company over $2,000.

From my experience, the recovery off the broker's bond is some 11 percent of the people who have licensed the bond.

To the extent the bond is retained, it is merely a mechanism to hopefully separate sheep from goats. Furthermore, credit information, although valuable and important, is no panacea or answer for the problem. When there are as many as 2,000 authorized brokers a year coming and going from the industry and certainly more if you consider all intermediaries, it is impossible to establish a credit trail that is worthwhile or definitive.

One of the examples that we have provided involves an Oregon carrier, who is now in bankruptcy, who lost $225,000 to regulated brokers that he says he checked out with Dun and Bradstreet.

So, the credit mechanism is certainly not the whole answer.

In anticipation of this testimony today, I picked five recent brokers who have had their bonds subject to revocation by the ICC and five intermediaries that I recognized as being recent people who had not paid carriers. I called one of the credit bureaus, in fact, the one sponsored by a trade association, and none of them was identified as bad pays.

The answer to the problem we believe is not to reregulate industry. It is not our position here to try to prejudice the role of transportation brokers or to deny that intermediaries play an important part. It is, rather, to define the rules of commerce, to insure that the carriers are going to be paid.

We submit that the intermediary role is that of an agent arranging for transportation and that the revenues of the intermediary are only his commissions, not the total freight charges.

We believe that the money which an intermediary receives should be received in trust, to the extent that it is actually owed to the carrier. By being received in trust, we mean only that there be a clearing house or escrow account established through which that money moves. It's just like as an attorney, I cannot take my client's money and co-mingle it with my general operating expenses. Similarly, an intermediary should not use money designated for a carrier to buy his wife a fur coat and then go out of business.

In sum, a carrier makes a $100,000 investment before it turns the first wheel. This investment and the fruits of the carrier's labor should be protected from intermediary abuses, which have a crippling effect upon the industry and, at the same time, the intermediary's role should be properly identified and allowed to prosper.

Thank you.

[The statement follows:]

STATEMENT OF THE AD HOC COMMITTEE TO END BROKER ABUSES

This testimony is offered on behalf of the Ad Hoc Committee to End Broker Abuse ("ACTEBA"), an organization composed of 48 concerned shippers, carriers and intermediaries in 25 different states in the U.S. This testimony is endorsed by The Maryland Independent Truckers and Drivers Association ("MITDA") which is also submitting a statement for the record. MITDA is an association of owner-driv-

ers and small fleet operators with members in 24 states and the District of Columbia.

My name is Henry E. Seaton. As an attorney for the past 14 years, I have represented primarily small, independently owned trucking companies before state and federal agencies. With the passage of the Motor Carrier Act of 1980 ("the Act"), the emphasis of my practice has shifted from assisting small carriers in obtaining operating rights to assisting the same clientele in securing payment for the loads they handle. As a result, I have extensive experience with the types of commercial problems facing small carriers.

The relaxed entry standards of the Act have encouraged more trucking companies to expand the scope of their operations, to replace joint line service with single line service and to offer the more flexible and responsive service that Congress intended. The competition for traffic has been heightened, and carriers who have equipment terminating a great distance from their base of operations must compete on the "spot market" for return traffic.

In order to allocate limited available freight, the number of intermediaries has greatly proliferated. These intermediaries are not just Interstate Commerce Commission ("ICC") licensed brokers, but include shippers agents, carriers who broker freight, exempt shipper associations, exempt carriers and others.

The proliferation of these intermediaries in the trucking industry has hopelessly confused the duties and obligations of shippers and carriers. Such intermediaries, by their own admission, act as agents of carriers, as the agents of shippers or as independent contractors, depending upon the facts of the particular transaction. After the fact, case by case litigation can be required to determine which role the intermediary played in each particular dispute. The opportunities for abuse, if not downright fraud, occur when multiple intermediaries are inserted into the payment loop of freight charges and the actual role they played in the transaction is ill defined.

It is all too easy for crooked or seriously under-capitalized intermediaries to take advantage of the quasi-deregulated marketplace to the detriment of carriers, shippers and honest brokers.

The current abuses are numerous and include:

(1) Intermediaries who collect from shippers and do not properly remit payment to the carrier providing service;

(2) Intermediaries who, when faced with a freight claim, pay the claim without adjustment and deduct the proceeds from the carriers in violation of proper claims procedures;

(3) Intermediaries who price gouge carriers by monopolizing available freight, incurring excessive commissions and depriving carriers of needed revenues; and

(4) The employment of circulars and adhesion contracts by intermediaries which restrict future carrier access to shippers and preclude bill-of-lading recourse.

As a result of the abuses set forth above, there are multiple victims.

(1) *Carriers are the primary victim.* When intermediaries collect for freight charges, but fail to remit to the carriers, the carriers are faced with maintaining lawsuits against the intermediaries and/or the shipper in order to obtain payment. The carriers access to markets can be denied and their capital structures can be threatened by illegal setoffs and unavoidable bad debts.

(2) *Shippers can be victims too.* Shippers can be required to pay twice when the intermediary to whom they have made payment fail to transmit monies to the carrier who actually provided service. Moreover, shippers and carriers can encounter significant problems in damage claims resolution when the intermediaries when whom they deal lack carrier status or cargo insurance.

(3) *Honest brokers can be victims too.* In co-brokered situations, honest intermediaries can be called upon to satisfy unpaid carriers when it was downstream intermediaries who abscond with funds. Moreover, the reputation of honest intermediaries is harmed by abuses when both shipper and carrier reticence to use intermediaries is increased.

(4) *Lending institutions, factors and banks, can be harmed also.* Carriers pledge their receivables and sell their freight bills to financial institutions in order to raise working capital. When carrier receivables turn into bad debts because of intermediary malfeasance, the bank's collateral is destroyed, and its willingness to make future loans to other carriers in the industry is diminished.

(5) *The payment crisis can affect the public as a whole.* The public interest in maintaining a stable motor carrier infrastructure is obvious. Bad debts due to intermediary abuse only weakens the capital structure of carriers, thereby affecting their ability to make investments and provide adequate transportation.

In the past two years, I have been involved in 448 freight charge claim disputes. I can honestly testify that I believe the problem of crooked and under-capitalized mid-

dleman in the transportation industry has reached epidemic proportions. Seventy-six point eight percent (76.8%) of the 448 claims with which I have been involved arose because some intermediary absconded with the money or otherwise diverted funds due and owing to carriers for its own use.

The following graph [5] statistically demonstrates that the problem from my perspective lies primarily with intermediary misfeasance.

The typical size of a freight charge claim against an intermediary is approximately $2,000.00. Pragmatically, this is frequently not enough money to chase an intermediary whose phone has been disconnected and may be located thousands of miles away. Similarly, a shipper who has paid once is reticient to pay a second time, and carrier/shipper litigation amounts to nothing more than determining who will bear the loss among two victims.

It is important for the Committee to recognize this problem as one which is widespread and crippling in its effect. I am attaching hereto a summary of the facts of some of the more interesting and flagrant cases I have handled. Some of these cases illustrate my belief that fraud, misrepresentation and racketeering is involved.

It also shows that the funds which can be diverted from authorized carriers is staggering. In one case, a broker who filed for bankruptcy after only a short period of operation listed 113 carriers as creditors to whom it owed $333,000.00. Its assets were limited to a $10,000.00 brokers bond.

It is difficult to believe that an intermediary, whose only capital investment need be an office, a telephone and a minimal bond, can lose that much money is such a short time. This case, while extreme, is not isolated. I have encountered situations in which intermediaries have sold their alleged accounts receivables to factors after they already collected for freight charges, but before they have paid the carrier who actually provided the service, thus effectively collecting twice for a service which they did not perform.

In one case, I am involved with handling claims for two carriers against the same exempt broker which totalled over $22,140.00. From talking with counsel for other victims, I know this amount is just the tip of the iceberg. The brokerage operation was closed without benefit of bankruptcy, and the last known address of its principal is Puerta Vallerta, Mexico.

It is not uncommon for a middleman to open in a new location as a purported agent or branch office for a licensed carrier-broker, only to have the license-holder deny any responsibility for its operation when the phone is disconnected and the funds are gone.

Some intermediaries seem to have a revolving door existence, closing down business only to reemerge under a new name with a new address. As long as an intermediary keeps changing the carriers it uses and makes sure that no carrier is close enough or loses enough money to institute hot pursuit, this scam can be repeated over and over again.

The complex arrangements which result from multiple or excessive intermediation can make following the payment trail and establishing culpability almost impossible. In one of the cases diagrammed in the Appedix, a shipment was handled from California to Michigan by a North Carolina-based carrier. When the Tennessee bank to whom it factored its bills went to collect from the shipper, it found that actually involved in the payment loop were a California broker, an unlicensed Washington carrier, a New York carrier with an exhausted broker's bond, and a New Jersey factor. Since two or more of the intermediaries are now out-of-business, who failed to pay whom has yet to be determined.

There is something that must prick one's sense of right or wrong to discover that there are nine or 10 carriers looking for a defunct middleman whose principal is enjoying life on a yacht on Puget Sound.

The operating margins and profitability in the trucking business today is too low to allow for the proliferation of bad debts and the excessive price gouging which is occurring. When a broker or other intermediary fails to discharge its financial obligations, a domino effect is created. Unfortunately, I have witnessed a number of carriers being forced into bankruptcy because of bad debts. Their bankruptcy, in turn, jeopardizes the financial stability of the vendors who have extended credit to them. The ripple effect undermines the entire motor carrier infrastructure.

Confused policy, unresponsive oversight by the ICC and the absence of clearly enunciated regulation, breeds chaos and incubates the type of intermediary abuse which I witness. Obviously, the ICC cannot and should not fulfill the role of "super-cop" to protect carriers from unwise or improbable credit decisions. It has neither

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[5] The graph was not reproducible.

the capacity nor the will to police transportation intermediaries. Yet, if the ICC fails to recognize the severity of intermediary abuse, it is only because carriers and shippers have long since stopped asking it for help. With the closing of the ICC's district offices and the cutbacks from nine regions to three, the "cop is off the block," and this significant problem has been lost in deregulatory rhetoric. The majority's treatment of this problem in the *Senn* Petition is an example of this, I believe, and Commissioner Lamboley's dissent and reference to the ICC's own internal record demonstrates an internal acknowledgement of the problem which the Commission has yet to face.

THE PRESENT BROKERS BOND IS AN INEFFECTIVE TOOL

The $10,000 broker's bond, which has been touted as the panacea for the intermediary payment problem, is a joke. First of all, the bond is not applicable to many types of intermediaries such as freight forwarders and other carriers. (Over 60% of the claims shown in Figure 1 involved unlicensed intermediaries.)

Secondly, the bond is exhaustible and amounts to only $10,000. The total claims filed against intermediaries are often six figures, and each claimant is lucky to get 10¢ on the dollar. In less than 10% of the claims against alleged licensed brokers has surety bond payment been available.

Finally, my experience indicates that bonding companies typically do not make payments to carriers on a voluntary basis, without some court action.

At least four large surety companies simply refuse to pay carriers, based upon a technicality in the wording of the bond itself, even though the ICC has informally advised them that carriers are proper claimants, and federal courts throughout the country have routinely paid carriers as a result of interpleader actions.

Other insurance companies typically surrender the amount of the bond to the first court they can find and name all of the known claimants as defendants. This can mean that to collect a $500 freight bill pursuant to ICC bonding requirements, a New York carrier can be forced to retain counsel and participate in a lawsuit in Salinas, California, for example.

The last time this happened to me, the pretrial conference was conducted over the telephone and amounted to a lawyers convention, with a Federal judge in California and lawyers in Louisiana, Michigan and the District of Columbia.

While the ICC has recently taken proper steps to disabuse insurers of the notion that carriers are not covered under the bond, raising the bond limit is probably not the answer. The Commission has responded positively to the T.B.C.A.'s argument that its members cannot easily secure even the $10,000 bond from existing insurance companies. While there is probably something telling in this statement, since even the smallest carrier must have $750,000 in public liability insurance to turn the first wheel, increasing the bond amount will not solve intermediary abuse.

BETTER CREDIT INFORMATION IS NOT THE SOLUTION

Similarly, better credit information on intermediaries and self-policing efforts by trade associations, while an effort in the right direction, cannot solve the problem.

The ICC has on file 6,028 licensed brokers. During a recent five-week period, 200 new brokers were added and 189 were deleted. This amounts to an annual turnover rate of 33%. Last week alone, there were 50 revocation actions. Although regulated brokers represent only a portion of the intermediaries involved in interstate transportation, these statistics show how fluid the industry is.

By the time a crooked middleman is reported for absconding with funds and the under-capitalized intermediary is identified as a deadbeat, by and large, the damage has already been done. The problem with intermediary abuse in the transportation industry is a nationwide problem and is not something which a Better Business Bureau can treat.

I tested this assertion by selecting "phone disconnected" brokers with whom clients already had claims. The brokers' trade association "hotline" could identify *none*. Of five randomly selected brokers whose bonds were canceled last week with the ICC, their "hotline" could identify *none* as problem accounts.

By way of anticipated rebuttal, I expect that many intermediaries will acknowledge that abuses occur and correctly argue that crooked middlemen masquerade as carriers and freight forwarders as well as brokers. They will, I believe, with a certain sense of deregulatory zeal, suggest that intermediation is the God-child of freer markets and that it should grow and prosper unfettered from additional regulatory supervision. In this context, I expect the Committee will hear the "law of the jungle" argument that only carriers who make bad credit decisions in extending credit to the wrong intermediaries will fail.

This argument is predicated, I believe, on the misguided premise that a broker or other intermediary is buying and selling transportation services as an independent contractor acting as a "quasi-carrier" *vis a vis* the shipper and as a "quasi-shipper" *vis a vis* the carrier. This position is fundamentally unsound.

THE ROLES AND DUTIES OF INTERMEDIARIES SHOULD BE DEFINED TO PREVENT ABUSES

Correctly viewed, the intermediary, in a typical truckload movement, does not act as a quasi-shipper or quasi-carrier. He never sees or touches the freight and does not bear any of the burden of transportation. The carrier, and not the intermediary, is responsible for (1) public liability insurance, (2) cargo insurance, (3) D.O.T. compliance, (4) federal highway use tax, (5) state fuel bond requirements, etc.

The service that the intermediary has provided is the limited but valuable service of bringing together a willing buyer (the shipper) and a willing seller (the carrier). The intermediary arranges for the provision of service, but does not provide it. The fee or commission that he is paid is like a real estate fee or stock brokerage commission. When a real estate broker receives earnest money to apply on the purchase of a house, that money does not belong to him. It is money received in trust and is not counted as revenue of the realtor. The actual sale and transfer of property takes place between the seller and buyer, who each assume duties and obligations for which the real estate broker is not liable absent fraud or misrepresentation. So it should be with freight brokerage by non-carriers. Similarly, a stockbroker typically receives payment for stock in trust, pays the seller of the issue and retains as his general revenue only the commission earned on the transaction.

To treat the problem of intermediary abuse, Congress must recognize its obligation to establish a framework of interstate commerce and identify the roles of the respective parties in light of freer entry and less enforcement supervision by regulatory agencies. To do this, the analogy to the role which intermediaries play in real estate and securities transactions is apt.

Under traditional commerce law, the bill-of-lading is a contract between the shipper and a carrier, expressly defined as "any person or corporation in possession" of the freight. Primary obligations of the shipper and the carrier under the bill-of-lading contract should be ratified and affirmed.

Regardless of whether the shipper or the carrier actually prepares the bill-of-lading, that bill-of-lading contract should reflect the name of the authorized carrier to whom the goods are tendered in order that the real parties in interest can be defined and the obligations of the shipper and carrier identified. Congress should further ratify the holding of the Supreme Court in *Southern Pacific v. Commercial Metals.* Unless the shipper executes the Section 7 or "nonrecourse" provision of the bill-of-lading, the shipper should be ultimately liable to the carrier for the payment of the freight charges, not withstanding the participation of intermediaries in bringing the shipper and carrier together.

Finally, Congress should provide by statute that transportation intermediaries receive payment for freight charges in trust and that they are obligated to remit promptly the amount of any payment owed to any authorized carrier. Comingling of trust funds or the transferring of monies due to the carrier should be forbidden. With the imposition of reasonable sanctions for malfeasance, Congress can establish a framework for solving the problems of intermediary abuse, without stifling competition, overly regulating the industry, or prejudicing the roles of brokers and other intermediaries.

In sum, the bad debt crisis and problems of intermediary abuse in the trucking industry are too critical to be swept under the rug or ignored. Deregulatory zest must be tempered by recognition that there must be laws in the marketplace to establish the stability necessary for competition to be fostered and encouraged. Interstate transportation is the exclusive province of the federal government. Congress ultimately makes the rules. The goals that Congress has set in the national transportation policy are being frustrated by the lack of defined and enforcible laws identifying the roles, duties and obligations of shippers, carriers and intermediaries.

Carriers, the one's that provide the service, operate the equipment, comply with the safety regulations and haul the freight, are the basis of the transportation infrastructure. Destabilization of the carrier industry by under-capitalized, "fly-by-night" intermediaries is an ill that Congress can correct. The "law of the jungle" is simply not good enough. Congress should set forth rules which recognize the value of brokers and intermediaries, but which inject some order into the regulatory chaos which breeds the abuses I have discussed. Federal law should establish the duties, obligations and responsibilities of shippers, carriers and intermediaries, and the

rules governing interstate commerce must be fine-tuned to control the opportunities for intermediary abuse.

ATTACHMENT

1. *Freight Forwarder—Utah.* A freight forwarder in Salt Lake City booked freight and employed common carriers, then billed the freight for a negotiated rate which was not supported by proper filings. Without notice, freight forwarder closed its office and terminated its telephone service. At lease 12 carriers were left unpaid. Losses to two particular carriers amounted to $60,000 and $100,000 each. All bank accounts of the freight forwarder were closed and no assets have been located in Utah. The debtor collected money for the shipments from the shippers before it terminated business.

2. *Broker—Massachusetts.* Our client had $8,403 in receivables from a licensed Massachusetts broker. The broker terminated operations although the principals remained in the trucking business. The attorney for the broker advises that the broker is bankrupt and cannot pay, although no petition in bankruptcy was filed. The carrier filed against the broker's bond with its insurance carrier. The insurance carrier said it had at least half a dozen claimants with claims totalling over $60,000. The ICC-required bond amounts to $10,000 in an aggregate limit, and the insurance company has not decided who, when or how much it will pay. The maximum pro rata recovery on the bond is 16¢ on the dollar even if no other claimants file.

3. *Broker—California.* The carrier has receivables totalling $80,474 from a California broker/carrier. The President of the broker signed a personal guarantee for the full amount then the brokerage corporation terminated operations. The President of the broker states that the broker is broke and that he lacks the money to made good on the guarantee.

4. *Broker/Carrier—Kansas.* The ICC and the Justice Department instituted a consent decree against the father for fraud, requiring him to provide public service and give lectures to shipping public. The son and father walked away from the carrier and broker in Tennessee with pending claims by at least one shipper for conversion of goods as well as judgment against the son arising from forgery of landlord's name on a sublease. The son reopened the company in a new name and filed an application to buy a small Kansas company. The father was employed by the son to set up and run its Albuquerque office. The new company then factored the receivables of the small company it purchased without paying its owners their agreed-to purchase price. Neither the seller, the company's employees, nor the carriers who actually handled its traffic were paid. Over 40 bad checks were given to 22 different people in the Kansas City area, then telephone service was terminated, and the company evaporated. The U.S. attorney who prosecuted the consent decree against the father was presented with the bad checks matter. No action was taken, but the son was arrested by state authorities in Kansas on bad check law.

5. *Broker—Wisconsin.* A Wisconsin broker co-brokered various loads for same principal with an Arkansas broker. The Arkansas broker gave one of several loads to an Ohio carrier. The truck wrecked in Colorado and the load was put in storage for the account of the Ohio carrier. The Arkansas broker's name appears on the bill-of-lading. The Wisconsin broker withheld payment to the Arkansas broker on other shipments. In each case, the Arkansas broker had paid the carriers invoiced, thus incurring an actual loss of this revenue. The Ohio carrier denied responsibility for the wrecked shipment, claiming that his owner/operator lacked the authority to accept the load in the first place. The full value of the load was $17,000, but the Wisconsin broker withheld $50,000 until he was sued. The load, meanwhile, which was initially fully salvageable, sat in a Colorado warehouse for nine months until it was ultimately sold at a much reduced rate. Federal court in Illinois was petitioned to resolve the matter.

6. *Alleged Broker—California.* John Smith d/b/a XYZ filed for a broker's license. As soon as the license was issued, Smith changed the name of the broker to Smith d/b/a ABC. Subsequently, an individual representing himself as XYZ solicited the shipper as a "carrier." He provided the shipper with no tariff or contract, but agreed to handle the shipments for a reasonable rate and asked the shipper to call the local number in Orange County for XYZ. XYZ represented itself as a broker to carriers in Arkansas, Tennessee and North Carolina. These carriers hauled traffic for the shipper and billed XYZ a negotiated rate. XYZ collected from the shipper who paid XYZ's invoices even though its rate audit department which keeps tariffs of authorized carriers and approves payments was not given these bills, XYZ, after collecting over $50,000, terminated its telephone service and now cannot be located. The shipper denies any responsibility to the carriers, although it admits it would

have sought relief from the carriers if damages had occurred on the shipments. Two of the carriers have instituted suit which is pending in federal court.

7. *Carrier—Indiana.* A Tennessee-based owner/operator handled a load of distilled spirits for an Indiana-based carrier. The carrier did not pay him. The carrier's attorneys advised that the carrier had gone out-of-business and that "assets were used to pay bank debt, and there are no unencumbered assets left." At the same time, the present chief executive officer and major shareholder of the Indiana carrier filed a petition with the ICC to purchase another carrier. The purchase price was $200,000 plus commission. ICC approval was granted.

8. *Broker—Florida.* A Florida broker represented itself as a branch office of a licensed broker based in Georgia. When it failed to pay carrier, carrier contacted its "home" office only to find that the phone was disconnected. Claims were filed with the bonding company, which advised that no payment could be made since the president of defunct brokerage in Georgia denied that Florida operation was his.

9. *Broker/Carrier—Tennessee.* Debtor who held both carrier and broker authority brokered loads to other carriers without benefit of a triplease. Debtor terminated service. When the creditor carriers filed on bond, the insurance company said the president of the defunct company would not permit voluntary payment because he is guarantor under the bond and contends the bond does not cover the loads.

10. *Shippers Agent—California.* An Oregon-based broker, at direction of a California shipper's agent, sends a Montana carrier to shipper's dock in California. The Oregon broker pays the carrier and bills the shipper's agent who in turn collects from shipper, but refuses to remit payment. The Oregon broker, as assignee of Montana carrier, is forced to threaten lawsuit in California for $800 against shipper in order to get paid.

11. *Shippers Agent—Ohio.* A New Jersey shipper retains a New Jersey broker to arrange for pool-peddle distributor of department store merchandise. The New Jersey broker retains an Ohio consolidator to break down truckloads and retender traffic to LTL carriers for delivery. Bills-of-lading all show the New Jersey shipper as consignor. The Ohio shipper's agent is paid by shipper through the New Jersey broker, but fails to pay delivery carriers. Delivery carriers turn to the shipper with the bill-of-lading contract. The New Jersey broker enters settlement to absolve his shipper from liability.

12. *Exempt Carrier—Washington/Broker—New York.* A shipment from California to Minnesota is hauled by a North Carolina carrier who factors bills to a Tennessee bank. The Tennessee bank invoices the California shipper who claims payment was made to an ICC regulated California broker. California broker advises that the load was co-brokered through a New York broker and Washington exempt carrier who, in turn, contacted the Tennessee bank's principal. California broker paid the New Jersey bank to which the New York broker factored bills. Now the New York broker, Washington carrier and Tennessee bank's principal are all out-of-business.

13. *Broker—Washington.* This bonded broker conducted business for some time without any notice of a payment problem. In March, it ceased operations and terminated its employees without notice. Carriers in Texas, North Dakota, Montana, Kentucky, Arizona and Washington, among many others, were not paid. Principals of the broker retired. No bankruptcy petition was filed. The broker's surety company is in receivership and no payment is anticipated.

14. *Exempt Broker—Idaho.* An exempt broker in Idaho (A) and a major exempt broker in Minnesota (B) co-brokered loads to a carrier (C) based in Virginia. C is listed as the carrier on the bill-of-lading and B is listed as the consignee and obligated for freight payments. C invoices A who closes its doors and reopens under a new name A-1. C then invoices B under the bill-of-ladingr. C declines to pay although it's still co-brokering as A-1.

Senator EXON. Thank you, Mr. Seaton.

I am pleased to recognize now Mr. Kretsinger.

## STATEMENT OF TOM B. KRETSINGER, PRESIDENT, AMERICAN CENTRAL TRANSPORT

Mr. KRETSINGER. Thank you, Senator.

I have submitted my statement. Mr. Seaton has capsulized much of what our points are. Therefore, for purposes of brevity, I will just capsulize further.

I am President of American Central Transport, Inc., of Liberty, Missouri. American Central Transport is a Class 1 carrier with rev-

enues of about $10 million. It is a well managed carrier, and a profitable carrier.

It has received excellent benefits over the last seven years, through "deregulation". We have been able to operate much more efficiently because of the entry ability.

However, in our operations, we have found that there have been many abuses during this transition period to "deregulation," which is really reregulation. I think those abuses of not only the brokers but of others need to be addressed at this point.

I have also practiced law for 30 years before the Interstate Commerce Commission and various regulatory agencies. Prior to that time, my father started practicing regulatory law before the Commission in 1935. So we go back a long way. I understand the trends in this industry and probably where I have some suggestions, it might be credible for you all to take those into consideration.

I might point out first that we have no faith in the Interstate Commerce Commission's administration and regulation anymore in many of these fields. For example, the Interstate Commerce Act requires that the application of a broker be submitted with evidence of fitness, and the Commission make a finding on fitness of the broker. That does not happen anymore. It is also true with motor carriers.

Motor carrier fitness is not examined anymore, as to financial fitness or otherwise.

So, the answer is not solely with the Interstate Commerce Commission.

I have suggested in the last couple of pages of my statement some legislative corrections which might be helpful, and some of those suggestions involve amendments of the Interstate Commerce Act. One of the suggestions goes to the amount of the bond, which, as Mr. Seaton said, is a joke.

I don't know why the Congress allowed the Commission discretion to set the amount of the bond when the Congress specifically set out requirements for liability and cargo insurance for motor carriers. It is an anomaly to me. Maybe it was an oversight. But the bond simply is not adequate.

Probably the real answer to this thing, as Mr. Seaton said, is in establishing a broker or any kind of intermediary as a trustee of the funds which goes through its hands. Section 499(e) of 7 U.S.C. relating to agriculture has an excellent example of legislation pertaining to brokers of perishable agricultural commodities in this trust area. It basically requires that all funds going through a commodities broker or any type of intermediary between the seller and the ultimate purchaser, be treated as trust funds. It gives civil and criminal penalties with venue in the United States District Courts, where we have reasonable venue to enforce these fiduciary obligations.

Venue is a serious problem in our cases because it is simply economically infeasible to collect many of these bills from brokers in state courts. And if the Congress would, in addition to some fine tuning of the Interstate Commerce Act, enact this type of trust fund legislation and put the fiduciary responsibility on these intermediaries to protect the basic shipper-carrier relationship—and that is the basic relationship; everybody else is subsidiary to that

relationship—to protect that relationship and the flow of funds, put on a fiduciary obligation on those funds between the shipper and the motor carrier, I think a substantial amount of the abuse would be corrected, in addition to the proper penalties and feasible enforcement of that type of law. The Interstate Commerce Commission does not enforce anything anymore. I mean, it might be putting out statistics or saying this or that in theory; but it is not an enforcing agency anymore, and it does not even have the funds to enforce the Interstate Commerce Act anymore.

So, those are suggestions, the suggestions that I have which might correct the problem.

We use brokers, and there are some fine brokers out there that we use, who have a lot of integrity, proper operating capital and the rest of it. So it is not a question of trying to do away with the broker industry. I think it is important also. But it has to be cleaned up.

It cannot be self-enforcing by some broker committee. That is the fox in the chicken coop type of thing.

Those are the points that I would like to make, and certainly I am open to questions along the lines of your interests.

[The statement follows:]

STATEMENT OF AMERICAN CENTRAL TRANSPORT, INC.

This testimony is made on behalf of American Central Transport, Inc., a motor common and contract carrier authorized to perform operations under common carrier certificate and contract carrier permit issued by the Interstate Commerce Commission ("ICC") in its Docket No. MC-138741 and Subs thereunder. It also holds a Broker's License from the ICC.

My name is Tom B. Kretsinger, Sr. and I am President of American Central Transport, Inc. ("ACT"). The company maintains its main office at 914 East Highway H, Liberty, Missouri, 64068. It and its predecessor proprietorship commenced business in 1926 and has operated continuously since that time, becoming regulated with the enactment of Part II of the Interstate Commerce Act (Motor Carrier Act of 1935) and subsequently receiving common carrier certificates from various state regulatory agencies. Presently, it holds intrastate certificates to perform motor carrier operations as a common carrier in the State of Indiana, Illinois, Missouri, Kansas, Nebraska, and Iowa.

I am also an attorney licensed to practice before the Interstate Commerce Commission. I specialize in transportation law and have done so since admission to the Bar in 1957. Prior to that time, my Father also specialized in transportation law commencing with the inception of Part II of Interstate Commerce Act of 1935. As a point of interest, my son is also practicing law in the field of transportation. In that activity, I have represented numerous motor carriers, shippers, and consignees over the years. I am familiar with the trends in motor carrier regulation, not only from an historical standpoint but currently.

ACT is a Class I motor carrier as defined by the Act and its revenues for the year 1987 will be approximately ten million dollars. It is a truckload carrier of general commodities and has performed operations in all 48 contiguous states of the Union.

Upon enactment of the Motor Carrier Act of 1980, ACT applied for and received authority from the ICC to perform operations in all 48 states, both as a common and contract carrier. With the rapid development of broker operations, ACT also applied for and received a Broker's License from the ICC in order to remain competitive with the industry.

My appearance is in support of legislation which give motor carriers some practical remedies in collecting freight charges and to "clean up" destructive practices presently engaged in by both regulated and unregulated brokers of property.

BRIEF HISTORICAL BACKGROUND

Much has been made of "Deregulation" with the inception of the Motor Carrier Act of 1980. To gain a proper perspective, however, one must review the circumstances surrounding interstate commerce motor carrier regulation.

The Interstate Commerce Act was initially promulgated by Congress in 1887, to control certain destructive practices engaged in by monopolistic railroads. The purpose of the regulation of railroads was a "trust busting" one and primarily resulted in regulation of rates and practices of rail common carriers. Subsequently, legislation increased this governmental presence in the field by regulating mergers, sales, acquisitions and other matters.

In 1935, the motor carrier industry was regulated. Many of the laws and regulations applying to railroads were subsequently applied to motor carriers, especially in the field of rate making and practices, including those of discrimination. Although rail *entry* control was not considered in 1887, it was a primary thrust in regard to motor carriers in 1935. Motor carriers, to obtain certificates, had to prove "public convenience and necessity" which was not statutorily defined. Those criteria were first developed by the ICC in, *Pan-American Bus Lines Operation*, 1 M.C.C. 190, decided November 2, 1936 (ICC). That administrative criteria was developed by the Interstate Commerce Commission, not the Congress; and in effect, made entry into the business by motor carrier not only difficult but expensive. A whole body of regulatory law subsequently developed over 45 years and it was not until 1980 when Congress decided to (in effect) repeal that administrative criteria and make entry into the field much easier. This is basically the "Deregulation" that occurred. The rest of the Interstate Commerce Act is still in effect, although administered and enforced very loosely, if at all.

Much of shipper/carrier relationships which developed over the last 100 years have been in the nature of commercial regulation rather than administrative regulation. Although the Interstate Commerce Act defines different functions, such as "common carrier," "contract carrier," "brokers," "freight forwarder," etc., these defintions came as a result of industry practices, not Congressional innovation; and the rules and regulations and laws concerning the relationship of the various parties is more of the nature of the Law-Merchant rather than administrative law. The Law-Merchant has ulitmately been codified in the Uniform Commercial Code. Although the ICC has certain authority to regulate or define the carrier/shipper/broker relationship, these relationships have been developed by Federal and common law.

The Bill of Lading Act sets out the basic duties of a shipper and a carrier. The ICC has defined the functions of various parties such as a broker but the Federal common law defines their relationships.

The problems currently faced by motor carriers, such as ACT, with the ambiguity of the Federal common law as to the carrier/shipper/broker, have become exacerbated under the relaxed entry environment which has come about since 1980.

### CURRENT COMMERCIAL DIFFICULTIES

Although the Interstate Commerce Act, as amended in 1980, is still in force, it is administered not by what we used to consider an "Independent Agency" but one that has been staffed by Commissioners of specific ideological views. It has become politically administered, in my opinion, and the motor carrier industry has very little access to relief from that agency as it is presently constituted. The problems existing in regard to the carrier/shipper/broker relationship can be corrected by amendment to the statutes.

In my view, the problems which exist in relation to shipper/broker/motor carrier relations are a direct result of the enactment of the Motor Carrier Act of 1980. That Act was intended to create more competition, and in fact did. Motor carriers found themselves in a transition from a very protected environment which required, in many cases, only mediocre management talent, to a very competitive environment, which required very sophisticated and knowledgeable management. I think this has been good economics. With many many motor carriers going out of business, managers and employees of failed motor carriers who lacked a sophisticated understanding of the industry, found themselves without jobs.

Many of them gravitated to the business of a broker or an agent for a motor carrier because of their past shipper relationships. All that was required to be an *agent* was an agreement with a motor carrier generally working for a percentage of the motor carrier revenue. Many of them found that engaging in the business of a *broker* was an alternative and applied for broker's licenses by the thousands. Although fitness of an applicant is an issue in a proceeding for a broker's license, this has not been strictly enforced by the ICC. All that the Commission has required was the ability of the broker to come up with a $10,000 surety bond. Those bonds, at the time, were easy to acquire. No capital investment was required to go into the broker business except a telephone and a desk. Prior to the Motor Carrier Act of 1980,

there were very few brokers in the business, probably less than fifty. Recently, however, over 6,000 broker licenses have been issued.

Motor carriers were also issued certificates by the thousands, most of them being small one-truck operators. Recently, statistics show that in the end of 1986, there were approximately 1,000 Class I motor carriers (revenues over five million dollars), approximately 1,800 Class II carriers (revenues between one million and five million dollars), and approximately 35,000 Class III motor carriers (revenues under one million dollars), as compared to approximately 17,000 total at enactment of the Motor Carrier Act of 1980. During the year 1987, thousands of certificates had been revoked. An exact count is not available. However, the ICC Register, reflecting notice of such revocations, has recently revealed as many as six or seven hundred revocation actions instituted per week. It must be assumed that the number of Class III carriers has diminished extensively.

With the high mortality rate of motor carriers, the broker business has become an irresistible attraction because of it minimal capital requirements and lack of practical legal responsibility.

Because of the turmoil in the industry pertaining to entry as well as exit and transition from carrier to broker, the vagueness of Federal common law has proved inadequate as a remedy. Practical problems deny remedy to motor carriers with bad broker debt and losses are ultimately passed through to the consumer. This is detrimental to the public interest in having a safe, sound, efficient motor carrier service at the most competitive rates.

Responsible brokerage service is needed by both shippers and the motor carrier industry, and many motor carriers are heavily dependent on brokerage service. For example approximately fifteen percent of ACT's ten million dollar gross annual revenue is derived from brokers. A brokerage service enables a shipper to concentrate on its primary business rather than having a traffic department. A brokerage service is of benefit to a motor carrier such as ACT and it eliminates the need for a large national sales force. It also helps carriers to obtain back hauls to be decreasing its empty mile factor and lowering its cost of transportation. This allows a carrier to be more competitive and ultimately benefits the consumer in the price the consumer pays for products.

Therefore, a vital and responsible brokerage system is important to this government meeting its regulatory goals. However, an irresponsible brokerage system has the opposite effect. It increases carriers bad debt, forces shippers to be unnecessarily involved in legal disputes, and these losses must ultimately be borne by the consumer which is contrary to this government's regulatory policy.

I will give you some examples from my background as a trucking executive, as well as a lawyer being retained to collect bad broker debt. First, understand that most freight bills are not a large amount of money. ACT's average gross revenue per load is $606.00. From a motor carrier standpoint, a motor carrier will normally try to collect this amount. It is aware that the older a debt gets the less chance of collection. Commercial collection agencies generally charge between 20 and 50 percent plus costs, such as filing fees, to collect a debt. A lawyer will generally charge the same. Therefore, once a freight bill has been turned over for collection, the loss has already been incurred and will be reflected in the carrier's bottom line. Furthermore, collection agencies and lawyers are often not interested in these small claims, as the total fee which they may receive which is contingent does not justify the effort which must be expended to collect the debt. Furthermore, it has been our experience that when we get claims against brokers, we are not the only carrier trying to collect a debt. Accordingly, the $10,000 surety bond is grossly inadequate. Many brokers deal with numerous carriers. What a broker is doing in many instances is "robbing Peter to pay Paul." The broker collects payment from the shipper and retains the money or plays a float and the carrier does not get paid. If the broker quits business or files bankruptcy, the only parties which are not judgment proof are the shipper and carrier. The shipper will assume that it has met its obligation by paying the broker and the carrier assumes it has met its obligation by delivering the freight. A Hobson's choice ensues when some tribunal must decide which of these two innocents must bear the loss. Regardless of which party bears the loss, it is the broker who has been unjustly enriched and the consumer which must ultimately bear the loss through increases in the retail product price.

This situation is not in the public interest. If reasonable legislative enactments can alleviate the problem by further defining the broker's relationship in the transaction in requiring higher degrees of financial responsibility and accounting from the broker. This is an industry wide problem and is reaching epidemic proportions. I have attached some examples of problems which my company has experienced. I do not believe that these are isolated problems of ACT but are industry wide problems.

PROPOSED RELIEF

Congress must take some action to amend the law to require a stricter accountability of brokers, a higher level of financial responsibility, and a more definite definition of the carrier/shipper/broker relationship. I have several suggestions:

1. Congress should enact legislation making it a Federal criminal offense for a broker to receive payment from a shipper and fail to pay a carrier. This would give adequate incentive for brokers to be more responsible. This is not a radical nor new idea. The General Assembly of the State of Missouri recently created the crime of lien fraud for instances where a building contractor is paid for a construction but fails to pay is subcontractors or suppliers and a mechanic's lien results. This enactment is reflected in section 429.014 of the *Revised Statutes of Missouri* of 1986. Similar statutes on a Federal level pertaining to brokers would have a profound effect on the problems which should be remedied.

2. Congress should enact legislation to ensure that the ICC enforces a strict standard in determining the financial fitness of applicants for a broker's license and should increase the minimum levels of financial responsibility required by a broker's surety bond to adequate and current realistic levels. The $10,000 surety bond which is in effect today is no more than a token gesture and certainly is inadequate to the evils sought to be remedied.

3. Congress should enact legislation which will clearly define whether the broker is an agent of the shipper or the carrier. Such designation could be required to be specified on the Bill of Lading. The effect of this designation and defintion would be to force shippers to be more selective in the selection and oversight of brokers and their activities, and would put carriers on notice when they are "at risk."

4. Congress should enact legislation which will provide for a statutory civil penalty and attorney's fees in an action commenced against a broker by a carrier or a shipper when that broker is paid but fails to pay the carrier. This alleviates some of the problems in collection which have been addressed previously.

5. Congress should enact legislation requiring the ICC to monitor and obtain a means to have periodic reviews of financial statements and accounting to ensure that brokers which are issued a license on the basis of a showing of financial fitness continue to remain fit.

6. Congress should enact legislation requiring brokers to file tariffs showing their rates and practices. This would protect against discrimination and rebating practices which Congress has sought to prevent in the case of regulated carriers.

7. Congress should enact legislation defining and imposing time limitations for a broker to make payments to carriers out of funds received from shippers. Such legislation would hopefully eliminate the temptation of many brokers to play a float and kite funds.

8. Congress should enact legislation prohibiting licensed brokers from directly or indirectly owning an interest in a common or contract carrier. The Commission's rules state, "A broker shall not, directly or indirectly, represent its operations to be that of a carrier. Any advertising shall show the broker status of the operation." *See*, 49 CFR §1045.7(b). Many carriers, my company included, hold both motor carrier authority and a broker's license. This has become customary since 1980. The problem creates the opportunity of discrimination, preferential treatment, further vagueness as to relationships, and confusion on rates.

CONCLUSION

The Motor Carrier Act of 1980 was enacted not to deregulate the motor carrier industry but to re-regulate consistent with the public interest. The focus on problems in the motor carrier industry, while ignoring problems in the broker industry, is not beneficial to the public interest. Although you have held testimony from many segments of industry concerned about the effects on them, it is the public which ultimately bears the cost of abuse. I therefore beseech Congress to look into this matter carefully and consider some of the remedies which I have proposed.

Senator EXON. Thank you, Mr. Kretsinger.

Mr. Fudesco.

**STATEMENT OF JOHN C. FUDESCO, ON BEHALF OF PENNSYLVANIA TRUCK LINES, EASTERN INTERMODAL DRAYMEN'S ASSOCIATION AND MIDWEST INTERMODAL TRUCKER'S ASSOCIATION**

Mr. FUDESCO. Thank you, Senator.

My name is John Fudesco, and I am a lawyer in the District of Columbia. I used to be an Attorney-Advisor to the Interstate Commerce Commission. In the intervening ten years, I have primarily practiced in the transportation field.

I represent Pennsylvania Truck Lines, which is a motor carrier operating in the intermodal field. I represent the Eastern Intermodal Association. There are 28 trucking companies that span from Richmond to Boston.

I represent the Midwest Intermodal Trucker's Association, which has 39 carrier members in the upper Midwest.

On their behalf, I am pleased to present this testimony.

I would like to briefly describe what intermodal operations are because it is my area of representation.

Intermodal service is when a trucking company transports freight, usually in trailers or containers, either to or from a railroad terminal or a steamship port. It is essentially called ex-water or ex-rail service because, again, it has this intermodal, or more than one mode or aspect to it.

In the intermodal field, the problem is not with licensed freight brokers. My clients do millions of dollars worth of business each year with licensed freight brokers and find them, in general, to be honorable. The problem is with the unregulated segment, the so-called intermediaries—shippers' agents, freight forwarders, so-called exempt shippers' associations, and just what has now become called a consolidated.

Even within those groups, there are many ethical operators. There is an association, the Intermodal Marketing Association, which was formerly the National Association of Shippers' Agents, and they have very, very high ethical standards. But the problem is the growth in the intermodal industry, which is the fastest growing segment of the trucking industry, has spawned all kinds of peripheral characters, which are essentially imposing a burden on interstate commerce by their billing practices and their billing procedures.

Seventy percent of the bad debts that my clients incur are with respect to these intermediaries. We are talking about millions of dollars, and I am going to submit empirical evidence. We have not had time, given the short notice, but I beg leave within the next ten days to submit such empirical evidence.

Senator EXON. Mr. Fudesco, let me interrupt you here. I think the thing that you just mentioned, those statistics that you are going to provide for us, would be extremely helpful. I want to point out that if you could get them in within the next ten days, when they are received, we will incorporate them as part of the record.

Mr. FUDESCO. I appreciate it, Mr. Chairman.

The problems that I am speaking of are industry-wide. I do represent a fairly broad cross section of the intermodal industry. But there have been statements submitted from the West Coast by an

attorney representing a committee of carriers out there that detail the same problems.

The problems in the intermodal field come from a failure or a delay on the part of the intermediary to pay the actual freight charges. My clients have seen their accounts receivable payment cycle increase from 15 to 30 days, to now 35 to 75 days. It is an intolerable situation.

Moreover, the problems come primarily because in the intermodal field, you can have so many different parties involved that it is really very hard to find out who to collect from. For example, there was a large Midwest intermediary that had two different divisions, and we presented bills to one of the divisions, and it so happened that the accounts payable desks of the two divisions of this one company were sitting right next to each other in the same office.

But, despite that fact, after a nice 75-day period, one of the guys in one desk would send it back to us and ask us to bill the guy in the desk next to him.

These examples are endemic in this industry.

The solution? We wholeheartedly support Mr. Kretsinger's attempt to really identify what is occurring here. The carrier is the one with the enormous overhead. The carrier is an essential cog in the Nation's transportation. And yet, the intermediary is being allowed to operate on the carrier's funds. The intermediary is not just taking what is his relatively narrow sliver of the funds, but he is operating on all the funds. It is hurting this Nation's transportation system.

We support amending legislation, and there is precedent for this. The Congress can be assured that there is precedent for this. Our clients do not support reregulation. They support establishing fair rules of commerce.

We also support increasing the surety bond. But the problem with that, and you identified it and Senator Kasten identified it earlier, is only probably less than 10 percent of the people that I am referring to are even covered by the surety bond. But a helpful suggestion might be that the surety bond might increase as a percentage of the gross revenues of the particular intermediary. It can start at the $10,000 level, but as the intermediary starts handling millions upon millions of dollars of funds, the surety bond could proportionately increase.

The third party system, the intermediary system, on its face, increases efficiency because it does allow for consolidation of loads. But the way in practice it is operating, with the failure to pay and the failure to honor lawful charges, is, in fact, burdening interstate commerce.

Thank you, Senator.

[The statement follows:]

STATEMENT OF PENNSYLVANIA TRUCK LINES, INC., EASTERN INTERMODAL DRAYMEN'S ASSOCIATION, INC. AND MIDWEST INTERMODAL TRUCKERS' ASSOCIATION, INC.

My name is John Fudesco. I am an attorney and have represented individual carriers and carrier associations in the past. This testimony is made on behalf of Pennsylvania Truck Lines, Inc. ("PTL"), Eastern Intermodal Draymen's Association, Inc. ("EIDA") and Midwest Intermodal Truckers' Association, Inc. ("MITA").

PTL is a trucking company operating 19 terminals in 10 states providing intermodal services to mainly third party freight consolidators and freight brokers.

EIDA and MITA are associations comprised of small and medium-sized intermodal carriers in Eastern and Midwestern states respectively.

INTERMODAL TRUCKING OPERATIONS

Intermodal trucking is providing transportation of trailers/containers to and from a railroad terminal where the trailer/container has been or will be loaded off or on to a railroad flatcar.

A typical intermodal move would utilize a trucking company to pick up a trailer at a shipper's warehouse and deliver it to a railroad. The railroad would transport the trailer on a flat railroad car to the railroad terminal nearest the consignee's location. Upon arrival at the railyard, a trucking company would be notified, pickup and assume responsibility for the unit, and deliver it to the consignee. During the entire trip the trailer doors are closed and sealed. Such intermodal moves are usually arranged by a third party freight consolidator or freight broker. The third party solicits freight from manufacturers and shippers and then coordinates pickups and deliveries by various intermodal carriers along the route from consignor to consignee. By consolidating these shipments, consolidators/brokers can guarantee certain levels of volume to the railroads and trucking companies in exchange for the lowest possible rates and/or tariffs.

PROBLEMS WITH THE PRESENT SYSTEM

The present system, which has the advantage of ensuring that freight is consolidated so that it is moved from consignor to consignee in the most efficient manner, is fraught with problems for intermodal carriers. Most of these problems involve denial of payment by third parties to carriers for charges incidental to basic transportation services and delay in payment by third parties to carriers even for basic transportation services.

Charges that are incidental to basic transportation services include trailer repairs, per diem and accessorial charges such as trailer detention, power detention, and driver labor. Although the carrier has been verbally instructed to perform transportation services by a consolidator/broker, he routinely encounters additional expenses while in the act of performing these services. It is common for the consolidator/broker to refuse payment of these additional charges based on the claim that the consolidator/broker requested that the carrier perform only transportation service.

A common example of these disputes is when a consolidator/broker notifies a carrier that a certain trailer/container is expected to arrive via train and that the carrier is to pickup the trailer/container and deliver it to a warehouse. Upon notification from the railroad that the trailer/container has arrived, the carrier contacts the warehouse to arrange an appointment for delivery. When the carrier arrives at the warehouse to effect delivery, the warehouse manager informs the driver that the trailer/container cannot be dropped off due to lack of space and therefore the driver must wait for the trailer to be unloaded in order to take it back with him. At this time it is customary for the carrier to notify the consolidator/broker of the situation and that additional charges will be incurred. As previously stated, however, the consolidator/broker often denies payment of the detention charges, claiming either that they did not authorize additional charges or that they have not yet been paid by their customer, and that they will not pay until they are paid.

Even when only basic transportation services are billed to third parties by carriers, carriers often have great difficulty in collecting from third parties in a timely manner. A large majority of consolidators/brokers believe that they are not covered by the I.C.C. regulation that requires payment of freight charges to the carrier within fifteen days from receipt of the invoice. In most of these situations the third party has already been paid by the consignor or consignee. Presently, the majority of consolidators/brokers delay payment any where from 35 to 75 days, causing extreme hardship to the carrier.

In addition to such delays in payment, many consolidators/brokers utilize billing practices that increase the carriers' cost of doing business. For example, sending the invoice to one location while sending the supporting documentation to another is a common practice. Carriers also experience delays in receiving cash receipts because consolidators/brokers claim they must first send the invoices for accessorial charges to various field commission agents.

Such third party billing practices not only make it difficult for intermodal carriers to conduct a viable business, but also leads to greater costs for shippers. The carriers' costs of continuing to pursue the consolidator/broker for outstanding delinquent payments and the subsequent strain on carrier cash-flow, only add to the in-

creasing cost of providing quality transportation in the market. Thus, because of unreasonable third party billing procedures, a system, which on its face appears to increase the efficiency of interstate transport, instead adds additional costs and burdens.

SOLUTIONS TO THE PROBLEM

The problems that carriers have with third parties in the present system are real. Real solutions are needed by intermodal carriers. We suggest that the following proposals be examined carefully by this Committee.

At present, payments by shippers for the transportation of their goods, payments that rightfully are due to the actual carriers that conduct that transportation, are paid to third parties who treat the payments as their own. Such payments are rightfully only held in trust for their intended recipients—the carriers. Legislation should be enacted that makes the true character of the payments received by third parties fundamentally clear.

The idea of classifying payments to brokers as held in trust for their rightful recipients is not a novel one. In 1984, the Perishable Agricultural Commodities Act was amended to deal with an analogous third party problem. In that instance, commodities brokers had treated monies received from the sale of food inventories supplied by food producers as their own. The Congress amended the Act (at 7 U.S.C. § 499e) to provide that, in the future, such monies received would be held in trust by the brokers for the benefit of the food suppliers.

Another method of resolving the current crisis would be to give carriers the right to demand payment from the shipper in the event that a broker defaults in his obligation to pay the carrier. This would require the consolidator/broker who is releasing the trailer/container to the carrier to provide a bill of lading to the carrier. The bill of lading would provide the official source of billing information which would greatly reduce "bill to" disputes. This bill of lading would also be required to disclose the beneficial owner of the goods. By providing legislation that would make the beneficial owner ultimately responsible to the carrier for the transportation cost, a carrier could place a consolidator/broker on notice that if outstanding delinquent charges due from the consolidator/broker were not paid by a certain date, the carrier could demand payment for such charges directly from the beneficial owner of the goods. The third party would then be pressed to make good on his obligation to pay what is rightfully due to the carrier, or risk losing that shipper's business in the future, because no shipper would want to pay twice for the same transport services.

A final suggestion is to establish bill submission and payment procedures that would require the third party to pay carriers in a timely manner and would provide a means by which carriers could be assured that incidental expenses beyond basic transportation costs would be paid.

It is our opinion that combining these suggested solutions is a practical and feasible approach to the problem, for they would provide for proper payment in a timely manner. In the event that a consolidator/broker failed to comply with the recommended legislation requirements, recourse to the beneficial owner would be available to the carrier. Third parties serve a valuable function in interstate transportation, and rightfully earn the commissions they are due. They should not, however, be allowed to continue to profit beyond those commissions at the expense of intermodal carriers.

Senator EXON. Thank you, Mr. Fudesco.

Gentlemen, your testimony has been very interesting and very helpful. Let me ask you a few questions. First is a general question that I will ask any of you on the panel who cares to respond.

The next panel will be represented by those speaking for the Transportation Brokers Conference. They will testify about their efforts toward self-regulation of the brokerage industry.

I would like to ask any one of you who cares to respond what are your views regarding the association's efforts? Also, does any of you utilize the services of the association that are available to carriers and others?

Mr. Fudesco.

Mr. FUDESCO. I would be pleased to respond, Senator.

Both that organization and the Intermodal Marketing Association are fine organizations with very high ethical standards. We wholeheartedly support them. In fact, my clients serve on many adjunct committees to those associations and attempt to interface with them as much as possible.

The problem, again, is that the combined members of these very helpful associations represent less than 10 percent of what we think the industry is comprised of. It is hard to tell exactly who is in the industry and who is not.

So I don't think they have either the breadth of membership nor the capability of policing the industry.

Senator EXON. Or, to put it another way, as I understand what you are saying, even if they were totally effective in doing what you think they should do and what they obviously want to do, we would have 90 percent of the problem still remaining?

Mr. FUDESCO. That's exactly right. That is another reason why the ICC's complaint count is, as they say, minimal—just because they do not have the jurisdiction over the people we are discussing here.

So, even if the ICC were effective, people would not be contacting them concerning the individuals that we are concerned with.

Senator EXON. Mr. Kretsinger.

Mr. KRETSINGER. I would say, from a legal standpoint, this society or any society has had to have enforceable rules to conduct its business. That is where the Law-Merchant came from, as I pointed out in my statement, resulting in the Uniform Commercial Code.

People in business don't enforce rules against what they might perceive to be their self-interest. We need some standard, you know, standard of conduct, which is enforceable, really enforceable, by an accessible enforcer, such as a court. We desire this to be in Federal District Court jurisdiction.

The money in the freight industry moves too quickly. A broker can go into business, and, within 30 to 60 days, it can accumulate $300,000, $400,000 or $500,000 in receivables and then go south. We have example after example of that.

So, if an association, a voluntary trade association—and that is all the brokers' association is, a voluntary trade association, which does not even have the status of a bar association, which has some self-enforcement—if they cannot enforce for their own members much less for 90 percent of the others who are not members, then it is just not feasible.

This is why we need this type of legislation.

Senator EXON. Gentlemen, I want to say to you that I think it is a general feeling of our subcommittee and the Commerce Committee, as a whole, that the ICC is simply not doing its job——

Mr. KRETSINGER. Correct.

Senator EXON [continuing]. In a whole series of areas. Here we are today, focusing on one that is of tremendous importance, particularly I suggest to the small carriers, who could be put out of business in a big hurry with their losses over the receivables that have been identified here this morning by Mr. Antholz, and I am sure that he is not alone.

This is true for a whole series of areas, and at least I am speaking for myself and I think for most of the Members of the Commit-

tee. We are distraught with the fact that the ICC has become more of a promoter for the "free enterprise system" than it is a manager of it, as contemplated in the act. I won't go into it any more except to say especially when I hear people here at this table, like you gentlemen, who have had years and years of experience, testify once again that in essence the ICC is just not doing its job. It lends credence to what we have felt for a long, long time.

There have been some rather sharp and heated exchanges over these tables with members of the ICC in recent months, and I suspect that will continue into the future. There are two members of the ICC whose terms are up, and we have not received one of those specific recommendations or nominations from the President since the President is having a great deal of difficulty with nominations to other areas in the Federal Government these days.

But I assure you that we are going to be doing everything that we can, as a subcommittee, to make a "thorough and extensive investigation" into any reappointments of the present members of the Commission that come over here.

Unfortunately, we have not yet gotten the attention of the majority of the Commission. Most of their votes are three one way and two another. They have marched in tandem, thumbing their noses, collectively and consistently, those three, to what most of us feel is a misinterpretation or lack of interpretation of the act and the part that the Congress felt that the ICC should play in a whole series of areas.

So, thank you for your testimony in that area.

Mr. Antholz, I understand that one of the people you have had difficulty with has been indicted. Is that correct?

Mr. ANTHOLZ. Yes, he has been indicted. He is in jail.

Senator EXON. I think you testified to that.

My question is this. How has that, or has that in any way helped solve your problem with getting your money?

Mr. ANTHOLZ. It has not solved anything because while he might be in jail, we have never been able to collect a dime. He has nothing that we can go after that we can prove.

The only trouble is I know of several more brokers the same way, that have closed up, or shipper's agents. Frank Serati did have a licensed and bonded brokerage. Out of 17 deals that he had run, two of them were licensed and bonded; the rest of them were shipper's agents; they were freight forwarders or whatever.

Senator EXON. Mr. Antholz, let me ask you this question.

Looking at the other side of this for a moment, to try to put it into balance, what percentage of your business is handled or brought to you by brokers or the nonregulated agents? Is it half of your business or 80 percent of your business?

Mr. ANTHOLZ. I'd say about 40 to 45 percent.

Senator EXON. It's 40 to 45 percent.

Mr. ANTHOLZ. Yes.

Senator EXON. Now, have you had some success stories with both regulated and unregulated middlemen?

Mr. ANTHOLZ. Yes. There are a lot of good ones out there.

Senator EXON. There are a lot of good ones.

Mr. ANTHOLZ. Yes, sir. But the crooks, the bandits are all moving in. It is a lucrative field.

I have had some people tell me they joined the TBCA just to promote their own needs. They come in, they are licensed, they pay their bills good and do business for a while, and then they walk away. They will join TBCA and stuff like that just to promote their own needs, especially the one in Dallas, Texas, the ANE Enterprises.

Senator EXON. What is your answer to the general thrust of the ICC testimony, which, as I understood it, was simply to say there are bad people in any business and that you and other people similarly situated have to take the risk of doing business with people that might not meet the standards of excellence, as far as business relationships are concerned, and that is a kind of "let the shipper beware, 'or, in your case, "let the carrier beware? 'What is your answer to that statement?

Mr. ANTHOLZ. Well, a lot of these people can come up with fantastic Dun and Bradstreet ratings, and they show up with no credit system that you know of as having bad credit. They do walk. They build up a good reputation and then they walk.

Senator EXON. In other words, some of them who have built up a pretty good reputation are the ones that have gone sour?

Mr. ANTHOLZ. Yes.

Senator EXON. Mr. Seaton, you propose that transportation brokers, like real estate and other brokers, be required to establish escrow accounts to insure that payments are made to the carrier providing this transportation service.

In light of some of the claims that have been made against unscrupulous brokers, why do you believe that an escrow provision would be any more effective in regulating these practices than current law?

Mr. SEATON. For two reasons, Senator. There are two reasons for nonpayment. Number one is the crooked broker or crooked intermediary. Number two is the undercapitalized intermediary.

Now, the undercapitalized intermediary sometimes is just a poor businessman and he is the one who starts operating on the carrier's money to cover his own overhead. If he understood that there had to be a separate escrow account and that if he comingled funds he was facing criminal charges for embezzlement or civil penalties, then he knows that that money that goes forward to the carrier must be kept separate and distinct and cannot be used to buy a new car or otherwise filter away the money.

For the crooks, Senator, I would seriously hope that if a provision like this were passed, maybe we could get some help from the Justice Department in terms of chasing these people.

It is a real shame that one year after this particular instance is over, a man has been indicted for perjury in bankruptcy. Most of these people never file bankruptcy. The availability of a good criminal sanction would, I think, go a long way toward straightening up the industry.

The reason that we have proposed that, rather than some other enforcement, quite honestly, sir, is because we have found precedent for it in what has taken place in agriculture. It is a self-executing mechanism. It does not require that the ICC become the cop on the block again. We have no faith that that would work. And it

does not unduly prejudice brokers, as opposed to other intermediaries.

We have proposed that this be a requirement across the board, so regardless of whether an individual is masquerading as a broker or as a freight forwarder or as a carrier who happens to broker loads, he would have the same requirement.

It is hoped that, with a civil and a criminal penalty, at least we would have one cause of action that we now do not.

Senator EXON. Thank you.

Mr. Kretsinger, I was impressed with your citation of some previous successful history with regard to agricultural shipments, and we are going to take a very close look at that.

Please elaborate on your view that licensed brokers should be prohibited from owning an interest in a common or contract carrier?

Also, would you comment on your company's activities in this area?

Mr. KRETSINGER. Yes, sir.

Most carriers have now received both common and contract carrier authority, as well as a broker's license, for self-preservation, if nothing else. The example that I can give is that the ability to operate as a contract carrier under the present administrative environment of no enforcement by the ICC of rates or practices is that a contract carrier does not have to file a contract with the Interstate Commerce Commission showing his rates. The rates are generally negotiated over the telephone, and, after the fact, maybe a piece of paper is signed to go into a file saying what the rate is.

Now, a broker, with a contract carrier permit, can, in effect, be a shipper or a carrier.

One of the problems in this whole area is that brokers have been allowed to identify themselves as shippers, and we don't see the shipper's name on a bill of lading, which is the essential contract between the shipper and the carrier. It has become so fuzzy and ambiguous that the law is almost in a state of cynicism in the whole industry. Everybody knows the law won't be enforced. Everybody knows that it is a joke, and so they just go as far as they can, realizing there will be no day of reckoning, whatsoever.

Senator EXON. So what we have now, then, with the attitude of the ICC and with the testimony that has been given by this panel is that possibly one of the reasons there are not more complaints to the ICC is that a large segment of your industry has given up.

Mr. KRETSINGER. It's totally futile. We think it is totally futile.

Senator EXON. In other words, why waste time doing something that is going to be spinning our wheels——

Mr. KRETSINGER. Exactly.

Senator EXON [continuing]. To use language that I think you truckers would understand better than I.

Mr. KRETSINGER. That is correct, sir.

Mr. SEATON. Senator Exon, I could have increased the number of ICC complaints last year by 50 percent if I had cared to generate the paper.

Mr. KRETSINGER. It's just not relevant to the problems in the industry today. The ICC is not a relevant participant in the problems of the industry today.

Senator EXON. Mr. Fudesco, I have just one last question for you. Your testimony notes the failure of the brokers to pay carriers for charges that arise for incidental expenses, such as repairs and things of that nature, on a per diem basis. Isn't this an issue which could be subject to contract between the parties? What is your proposed solution to the problems in this area?

Mr. FUDESCO. Senator, it could be subject to contract. But the reality of the way traffic moves in our industry is that in very few instances, and only with those reputable brokers that are there long enough, do we even have a written contract. Most loads are brokered over the phone. Because the brokers or the intermediaries do control most of the freight in the area, the contracts are woefully inadequate on that subject.

What happened is in 1985, the railroads were not being paid by the intermediaries for the storage and use of their equipment, and they could not collect from the intermediaries because the intermediaries would just take the business elsewhere. So the railroads came up with the right idea of let's charge the drayman, let's charge the trucker for the use of the freight containers themselves, and if it is stored someplace in somebody's backyard, let's make the trucker pay for it, because we have control over him and we don't have control over the intermediary.

So now the trucker is faced with these staggering costs. What will happen is a broker will tell us to pick up a load at the Potomac Yard, right across the river here, and say that it is destined up to New Jersey, and there will be just a base freight rate that is quoted for the service. Well, we will bring it up to New Jersey, and the plant manager almost invariably will say we don't have room for this trailer here, you have to stay with it and unload it, and then take the trailer away from them.

So we call the broker, or the intermediary, which is much more common, and say that we are faced with these incidental charges and they say well, go ahead and do it. But then, when it comes to paying for them, they say to bill the shipper.

Well, we don't even know who the shipper is because it is not required, we don't have the bill of lading, the name of the shipper. We don't even see the bill of lading. It is normally locked inside the trailer.

So, these charges are staggering in amounts. You are talking about driver labor, trailer repair, trailer storage, trailer rental, and the trucker, who is the backbone of the whole system, is, in many instances, just writing them off. That is probably a bigger problem in the intermodal field than just the direct failure to pay base freight charges.

The solution, in my mind, would be if the funds, if it is originally contemplated by a shipper that there would be these accessorial charges, these funds would become part of the trust money, which rightfully belongs to the carrier. The other solution would be if, on the bill of lading, the shipper was named and the carrier was named, we would then have recourse to the shipper to collect these charges.

Right now, the only one named on the bill of lading is the broker, and he says bill the shipper and we don't know who the shipper is in many instances.

Senator EXON. The last question that I have I am going to address to Mr. Kretsinger.

We have been focusing on the difficulty with the brokers and the unlicensed brokers or agents in the trucking industry this morning. What knowledge do you have of similar difficulties in the other means of transportation—railroads, barges, and so forth and so on?

I assume, and do I assume correctly, that the problems you have outlined here are just as serious in other means of transportation besides trucking, or is that not correct?

Mr. KRETSINGER. I cannot speak from direct participation in those fields. But, from what I understand, it is a common problem.

I might give you this example that happened to American Central Transport. We transport regulated freight consistently from Kansas City to Colorado. Well, the only freight out of Colorado are agricultural products, which are exempt from regulation by the Interstate Commerce Commission. Brokers also engage in agricultural product transportation, so they don't have to be licensed.

One of the brokers who represented many of the onion producers in Colorado went south with a substantial amount of money, including about $20,000 or $30,000 of our money, and the producers say that well, we are not responsible, look to the broker. And he is unlicensed. Well, the ICC has absolutely no jurisdiction over that type of broker.

The trust fund concept should apply to all brokers, whether the ICC is involved or not. It is not an ICC question in that regard, as far as I am concerned.

Senator EXON. Gentlemen, I thank each and every one of you for your valuable testimony.

You are excused.

The last panel this morning which I will call at this time consists of Mr. Timothy Lee, Vice President of Superior Transportation Systems, Inc., of Wilsonville, Oregon; Mr. Herbert Kotzen, Vice President of the C. H. Robinson Company of Eden Prairie, Minnesota; and Mr. Richard P. Schweitzer, Legislative Counsel, Private Truck Council of America.

Gentlemen, thank you for your patience and thank you for waiting. I should explain that I was delayed in getting back from the floor because of the parliamentary mess that we are in over there. Also, from looking at the signal on the clock, we are still in it. Maybe we will stay in it long enough for you to complete your testimony. I hope so.

Mr. Schweitzer, we will start with you.

## STATEMENT OF RICHARD P. SCHWEITZER, LEGISLATIVE COUNSEL, PRIVATE TRUCK COUNCIL OF AMERICA, INC.

Mr. SCHWEITZER. Mr. Chairman, I have a very brief statement. The first thing that I want to do is explain what private carriers are doing testifying in a hearing on brokerage. With the regulatory changes in the 1980s, operating efficiency is now a paramount concern to the shippers and to the private carriers that serve them. Brokers are one very, very effective means of stimulating that efficiency in these transportation operations.

Our member companies, and there are about 1,500 of them, use brokers either in our members' capacities as shippers or as carriers. In addition, about a third of our member companies also have supplemental operating authority to help reduce their empty backhaul miles.

Now, when you have supplemental operating authority as a private carrier, you generally don't have any sales force or any means to solicit outside freight. Brokers provide that sales force for small private carriers seeking to fill these empty miles. It is simply too expensive to solicit that freight yourself.

But, on the other hand, these loads can make a tremendous difference in justifying a private fleet operation.

Now, a significant number of our member companies—and I would estimate that it is probably between 10 and 20 percent—also have broker's licenses as well. They engage in what are sometimes called continuous movement programs.

With a broker's license, a shipper or a private carrier can solicit additional freight from other shippers, and they can, in turn, offer a larger volume of freight to a particular carrier. The shippers get better service and they also get lower rates out of it because of the volume. The carriers also benefit because they get assurances of a steady stream of business from one source.

This goes to one point that you brought up earlier this morning. If you restrict carrier ownership of broker's licenses or broker's interest in carriers, you are going to restrict the ability of some of our member companies to fill their empty backhaul lanes and also to consolidate freight for the purposes of dealing with the single carrier.

Brokers provide a tremendous service in the marketplace. I think the fact that we have heard testimony this morning that their numbers have grown from a handful to over 4,000 in less than a decade is a testament to the value of the service that they provide.

What they really provide to both shippers and carriers is information. They match demand with the lowest cost supply. I think that is really the crux of the problem that we are talking about here this morning. The problem is that carriers don't like being the lowest cost supply.

I think that, in essence, is the real complaint that carriers have about brokers. To a large extent, the brokers have intruded into this comfortable and uncompetitive and inefficient marketplace that we had prior to 1980 in the motor carrier industry, and carriers have resisted the intrusion that the brokers have made.

I don't think that we really have a question about commercial abuses. We have a question about market share.

I sympathize with these businesses that are going to have to write off bad debts. Nobody likes to do that. But I have not heard anything this morning that cannot be corrected by prudent businesses practices and by existing commercial and criminal law.

We represent at the Private Truck Council industries in all facets of the American economy—agricultural products, manufacturing, retailing, food, beverages, steel, petroleum, ad infinitum. None of those industries has a commission that guarantees their bad debts. They are required to rely on themselves to exercise pru-

dent business practices and then to resort to the courts or to criminal and commercial proceedings if they don't get paid.

I certainly urge this Subcommittee not to consider any unnecessary or burdensome remedial legislation.

Thank you, Mr. Chairman.

[The statement follows:]

STATEMENT OF RICHARD P. SCHWEITZER, LEGISLATIVE COUNSEL, PRIVATE TRUCK COUNCIL OF AMERICA, INC.

Mr. Chairman and members of the subcommittee: The Private Truck Council of America, Inc. ("PTCA") is a national organization representing the interests of some 1,500 companies that operate private truck fleets in furtherance of a non-transportation primary business. Our member companies comprise a cross-section of American manufacturing, processing, retailing and agricultural enterprises, and include a large number of Fortune 500 companies as well as many smaller concerns.

Private trucking is by far the largest subset of the entire trucking industry. According to a recent study by the University of Michigan Transportation Research Institute, private fleets operate 52% of the tractors on the nation's highways. In addition, private carriers operate the vast majority of straight trucks in local and regional distribution systems, making the private fleet share of total intercity truck mileage well over sixty percent.

According to PTCA membership surveys, some one-third of our member companies also hold supplemental common or contract carrier operating authority from the Interstate Commerce Commission and/or state regulatory commissions. Also, a significant number (I estimate between ten and twenty percent) of our members hold ICC broker licenses as well.

The use of operating authority and broker licenses help private fleets, and the companies they serve, establish cost efficient transportation options. Private fleets that previously had to operate empty vehicles on backhauls can now offer common or contract service directly to shippers.

Yet private fleets rarely have sales forces or agents who solicit return loads for the carrier under the supplemental authority. The cost of employing such a workforce is generally prohibitive, especially considering that private fleets average fewer than 40 over-the-road vehicles, and that for-fire operations are usually only a small percentage of the total fleet operations.

But those backhaul operations may be critical in order to justify the continued private fleet service to the primary business—and brokers frequently provide the sales mechanism for small private carriage fleets would undoubtedly reduce the service provided the primary business because the cost of deadhead operations on the return trips would be too high.

Some private fleets have themselves obtained broker licenses in order to serve their own supplemental for-hire operations. In the early 1980's, companies could get brokerage authority to arrange general commodities shipments on a much broader basis than most motor carriers could secure from the Interstate Commerce Commission. By then obtaining motor carrier authority to serve the broker, a private fleet could augment its supplemental authority beyond normal regulatory bounds. Since the ICC will now grant contract authority to transport general commodities between points in the 48 contiguous states, however, it is no longer necessary to use brokerage authority to increase the scope of backhaul operating practices.

However, many shippers and private carriers still use broker authority to improve transportation efficiency and reduce cost. The following excerpt is from a recent article by Terrence Brown of Pennsylvania State University on "producer-owned" brokerage operations:

One of the most important reasons for the existence of [producer-owned brokerages] today is the producer's desire to support some type of continuous movement program. Essentially these programs attempt to help common and contract motor carriers improve efficiency by reducing their empty mileage. This in turn benefits the producer through lower trucking rates and/or improved service. Xerox, Virco, Cargill and Glidden all reported use of the broker's license to support the carrier that served them.

Xerox, for example, owns no private trucks, but has perhaps one of the best continuous movement programs in the nation. Xerox negotiates the purchase of trucking service on a centralized basis, and uses its broker's license to arrange shipments of other firms' traffic, thus increasing the total volume of freight Xerox has to offer carriers. Most importantly, the Xerox broker attempts to attract freight which

moves in lanes and directions which are currently "open." For example, Xerox may have a carrier taking freight from one origin to a destination, but nothing, or not enough, coming back to origin. Thus the broker attempts to solicit freight to fill in the empty lane. In this way, the carrier's empty mileage is reduced along with the rates it charges Xerox.

Of particular interest is the fact that Xerox uses its broker to help fill lanes for both truckload and LTL shipments—not a typical situation, since most firms interviewed concentrated their brokerage operation on truckload traffic rather than LTL. The Xerox program also helps improve service. In one lane where only two trips a week were justified, the broker attracted more freight and got daily service from the carrier. Although the Xerox broker earns a profit, the reduced rates and improved service it produces are more important to the corporation than broker profits. "Producer-Owned Brokerage: Some Preliminary Findings", *The Professional Broker,* November 1987, p. 17.

As both carriers and shippers, thus, private fleets use brokers to fill empty traffic lanes. And many private carriers or shippers also act as brokers to serve both their own shipping and carriage functions and to support outside carriers. While the players and their roles change frequently, the result is a significant improvement in the utilization of transportation equipment and drivers.

If brokers provided no service in the marketplace, they would cease to exist. But the fact that the number of licensed brokers has risen from a handful to over 4000 in less than a decade is testament to the value of their service.

Brokers provide information to both shippers and carriers; and information is a valuable commodity in any marketplace. Shippers without this additional information are forced to deal only with the carriers they know are available, at rates and service levels these known carriers provide. With less than full knowledge of the marketplace, rate and service options are limited, and shippers end up paying more per transaction.

Likewise, carriers benefit from the market information provided by brokers. Without this information, carriers would have to rely soley on their own sales efforts, and their knowledge of available freight would necessarily be limited. Carriers hold the ultimate safeguard against broker "abuses"—there is no requirement that a carrier continue to do business with a broker that does not abide by ICC rules or standard commercial law practices. Yet judging from the allegations in the *Senn Trucking* petition, below, carriers appear to want all the market information provided by brokers without any of the attendant risks of conducting business in a competitive environment.

The *Senn Trucking* petition. In *Senn Trucking Company—Lawful Practice of Property Brokers—Petition for Rulemaking,* No. 39962 (1986), petitioner Senn Trucking made a series of allegations to the Interstate Commerce Commission regarding abusive practices by brokerage operations. These allegations asserted that: Brokers demand carriers charge rates other than those published in the carriers' tariffs; brokers do not automatically disclose their total compensation to both carrier and shipper for each transaction; brokers withhold payments entirely, or do not pay in a timely fashion; brokers regularly bill both shipper and carrier and are paid amounts "totally out of proportion to their costs" (Senn Trucking Company, petition for rulemaking, p. 4); and brokers encourage or demand carriers to violate federal motor carrier safety regulations.

The Commission, finding adequate existing remedies for any abuses cited, denied the petition for rulemaking on November 17, 1986. This subcommittee is now being presented with a similar bill of particulars regarding problems with brokers.

However, this hearing is not about specific, or even rampant and recurring, abuses by brokers. The crux of the complaint by carriers is that brokers have significantly intruded into the comfortable, uncompetitive and inefficient truck transportation market that existed prior to partial economic deregulation under the Motor Carrier Act of 1980. Brokers are in the business of matching demand with lowest cost supply. This eliminates empty equipment, and rates are kept to levels that will attract needed equipment and labor to the marketplace, both without costly surpluses.

The ICC explicitly recognized this underlying dispute in its dismissal of the petition: The results contemplated by the proposed changes can be accomplished to a large extent by prudent exercise of business judgment in entering agreements with brokers both by carriers and shippers. Indeed, we are not here faced with a plea from shippers for protection from "unreasonable practices." The dispute seems to be between rivals, which, while also partners, ultimately divide the revenues. The effects of Senn's requests would be to strengthen the carrier's bargaining position and weaken the broker's. *Senn Trucking,* at 5.

It is true that brokers demand carriers to charge rates other than those published in the carriers' tariffs. So do shippers. These discount requests are entirely legal, and the fact that the majority of freight hauled today moves under discounted tariffs (or negotiated discounts with contract carriers) is striking evidence that the rates collectively set under antitrust immunity are artificially high. Senn's petition for reconsideration calls the carriers' rates "market rates," but they are merely tariff rates. Market rates are what a buyer of services will actually pay for the service, and the discount requests indicate shippers are not willing to pay tariff rates.

The allegation that brokers receive excessive compensation for their services is patently absurd. It is appropriate, however, for carriers to complain about excessive compensation—regulated carriers are quite knowledgeable in that area, having received excessive compensation since 1935 under the Interstate Commerce Act. Carriers must learn to operate in a world where the federal government is not the guarantor of every business transaction, and where there is a burden on each party to use prudent business practices to research the reliability and financial status of a business partner *before* engaging in a transaction.

Senn's allegations that payments are withheld by brokers, or are not made in a timely fashion, again bespeaks an unfamiliarity with even the basest form of business sense. You simply refuse to do business with someone who will not pay for services rendered.

Senn's request that brokers be required to disclose all compensation is something that carriers are not required to do. First, there is a present rule (49 CFR 1045.3) requiring brokers to keep a record of each transaction, the amount of compensation received, and the name of the payor, for three years at the broker's place of business.

Second, contract carriers no longer file any tariffs with the Commission, and truckload common carriers have sparked a dispute within the American Trucking Associations because they, too, want freedom from the tariff-filing rules. Finally, carriers who lease owner-operators are not required to divulge to shippers the compensation paid to the owner-operator for hauling the load. If this is a justifiable notice requirement, it should apply equally to brokers and carriers alike.

The charge that brokers encourage or force carriers to violate the safety regulations is misplaced. Senn's petition claimed that one broker knew that Senn did not offer driver team operations, but the broker continued to tender Senn freight with delivery schedules that could not be met legally with a single driver (of course, Senn had so little faith in its charge that it failed to identify the broker in its petition).

Senn has two possible responses to the situation: one, refuse the freight; or two, haul it with a team operation. If Senn knows that other motor carriers are hauling this freight in violation of the hours of service rules, Senn should immediately notify the U.S. Department of Transportation or state safety enforcement agency and seek prosecution of the violators.

Brokers properly are not subject to the safety rules; it is the carrier which ultimately meets or fails to meet the safety rules. Attempting to "prove" coercion by a broker (or a shipper) would simply overburden an already understaffed enforcement mechanism while ignoring the one party most directly connected to the day-to-day transportation service.

In sum, brokers provide a valuable service by improving the efficiency of truck transportation. Private fleets and the shippers they serve have particular use for brokers in a number of different business relationships. While there may be abusive, and even illegal, practices by some brokers, use of existing commercial law and prudent business practices will adequately protect shippers and carriers alike.

Senator EXON. Thank you, Mr. Schweitzer.

Mr. Kotzen.

## STATEMENT OF HERBERT KOTZEN, VICE PRESIDENT, C.H. ROBINSON CO.

Mr. KOTZEN. Thank you very much, Senator. I have a very short statement, although I have submitted a very detailed statement. My statement is probably less than two minutes long.

Senator EXON. We appreciate that. Also, as I said earlier, all of the prepared statements will be accepted as part of the record.

Mr. KOTZEN. Thank you very much.

My name is Herb Kotzen, and I am here on behalf of C.H. Robinson Company to give you my thoughts concerning the oversight review of transportation third party services.

I say "third party services" because the term "broker" includes many types of businesses providing many types of services to the transportation industry. All could be hurt by new legislation.

We operate a distribution system in 52 locations in North America and we move more than 1,000 loads of freight per working day. We were established in 1905, and formed our tradition in transport which was exempt from ICC regulation and still is, and believe our longevity and growth indicate that we have learned a little bit about the business that we are in.

Without any regulatory compulsion, our market has driven us to take certain responsibilities. We guarantee in writing and advertise that we will pay for loss and damage claims on cargo even if the carrier does not; that we will pay the carrier promptly whether we are paid or not; that our customers will never be billed back for any additional charges; that we only use carriers insured to our standards and that our carriers will only use drivers that are properly qualified.

Companies are just beginning to realize the importance transportation plays in competition. Creative transportation solutions can add value to a product. Efficient transportation can exert a strong influence on cost. Third parties can help the transportation business provide these creative solutions only because we are open-minded, flexible, creative, and careful in the way we buy and organize transportation services.

We can only do that because we are unhampered by burdensome regulations, which have traditionally been the hallmark of the transportation industry. It is hard for me to sympathize with a carrier that would sign over its equipment without checking the broker's credentials. In fact, the brokerage organization widely circulates and publishes a checklist for carriers to utilize when using brokers. We do everything we possibly can but make the telephone calls for the carrier to check on our credentials.

Within the past year, I had open heart surgery. It happened suddenly and without any previous indications of trouble. My wife met me at the hospital and I don't remember this because I was under sedation, but she swears this is true. As they were wheeling me into the operating room, I was interrogating the young surgeon. Where did you go to school, I asked him? How many of these operations have you performed? How many are still alive?

I could not break 35 years of conservative business practice. I needed references and so should everybody else.

I did not pick the surgeon because he had the biggest ad in the Yellow Pages.

I urge you to remember that deregulation changes our careers, our prospects, and our industry; but it did not change good business practices. We must choose our business partners carefully. This responsibility should not, and, in fact, cannot ever be removed through government regulation.

Thank you for giving me the opportunity to testify.

[The statement follows:]

STATEMENT OF HERBERT KOTZEN, VICE PRESIDENT, TRANSPORTATION, C.H. ROBINSON CO.

The C.H. Robinson Company is pleased to present this testimony before the Senate Commerce Committee in the exercise of its "oversight" function. In my brief remarks, I wish to inform you concerning some of the essentials of efficient, successful brokerage services as we have learned them over the decades. We hope such information will be useful to you in identifying why the Interstate Commerce Commission's liberalization of brokerage regulations in 1979 and the Motor Carrier Act of 1980 have been so successful in fostering a vigorous transport brokerage sector. We hope this information indicates why any attempt to reimpose regulatory controls would stifle the potential of the fastest growing service sector in transportation.

One of the things you will learn in these oversight hearings is that the brokerage sector has tremendous diversity. The Robinson Company is itself unique in a number of respects. We are at present unique in our size and geographic reach. We are distinctive in our business practices. And we came to this position by a unique historical evolution.

The C.H. Robinson Company has, over the eighty years since its origin in 1905, come to be a substantial broker of fresh fruits and vegetables in the United States and internationally; a shipper, packer, and sales agent for agricultural producers; a provider of equipment finance; a full service finance company offering insurance and other services in the Minneapolis area; a regulated carrier of general commodities; and, we believe, the largest contractor of truck transportation in the United States.

Our revenues from all operations were in excess of $750 milion in 1986. We operate in 52 locations in North America. We are employee owned, and our employee/owners have seen substantial growth in their assets over many years. We think our longevity and growth indicate that we have learned, at least, a little about the businesses we are in. We move more than 1,000 loads of freight of all kinds per working day.

Robinson subsidiaries conduct both regulated truck brokerage operations and exempt truck contracting operations. We have records of using over 250,000 carriers in recent years. We tender freight to several thousand carriers weekly. We contract for the transport of a very broad range of general commodities. Name one hundred respresentative commodities at random, and I daresay we have recently handled over 90 of them. Those we didn't handle yesterday, we may very well tomorrow.

At C.H. Robinson, on any given day, we can pinpoint at least 50 trucks within a day's drive of any point in the country.

Depending upon the particular fleet, trucks travel empty 10 to 50 percent of the time. By having access to the collective emptiness of the nation's motor carrier fleet, we are positioned to perform complex national distribution programs and promote financial health and operating efficiency among carriers.

C.H. Robinson takes the responsibility to pay the carrier whether the shipper pays Robinson or not, and to pay the shipper's justified claims if the carrier does not. We promptly confirm this in a written contract. In other words, entirely without regulatory compulsion, we have made a practice of being financially responsible to both the shipper and carrier. We don't ask for plaques of civic commendation for this, we have found it is good business. It leads both shippers and carriers to want to do business with us.

We match shippers and carriers quickly, flexibily, and reliabily; often as fast as you can make telephone connections. We keep our paperwork to a minimum, but I assure you that we have late model, large scale, computing equipment, and we keep our business records accurate and current.

We have invested heavily in computer information systems. Our truck tracking system, which we believe is the best of its kind, provides us with access to more than 200,000 units of equipment throughout North America. That's the equivalent of four UPS fleets. Our shippers are Fortune 500 companies. The carriers we match them with are some of the biggest names in the industry.

Since the 1980 Motor Carrier Act, we have rapidly expanded our brokerage operations trying to make them as efficient as we can. One of our most successful tools has been a program of lining up contract carriers for the regulated brokerage arm. Since contract carriers do not have to file tariffs or schedules of rates with the Interstate Commerce Commission, we can rapidly settle on prices with regulated contract carriers which meet particular shipper demands, to the benefit of the shipper and carrier, as well as ourselves. We find well established, national scale carriers as well as small carriers and owner operators eager to sign up as contract carri-

ers. Only reputable carriers are utilized. All are required to provide us with certificates of insurance showing $75,000 cargo, $750,000 public liability, and adequate workers compensation.

We require that all drivers be properly qualified by Department of Transportation standards. We explain the customers' requirements to all drivers before each shipment. All drivers in transit are required to check in between 8:00 and 10:00 a.m. every morning. We require that no loads be stopped or stored in transit. All loads, after pick-up, are delivered directly to destination with reasonable dispatch. Further, we work with our customer in any effort to set higher standards in the areas of safety, management training and education, insurance, and claims settlement procedures.

In both the regulated and exempt sectors, we do not restrict our compensation to percentages of the carrier's tariff. Indeed, in the exempt sector and with licensed contract carriers, there is no tariff. We determine the shipper's transport need and willingness to pay, determine the carrier's availability and revenue requirement, and where we can make a match which pays us for our efforts, we make a deal everyone involved wants. This means that we keep the difference between the shipper's payment and the carriers' rate. The system is simple, and it works. Given the number of shippers, carriers, and brokers in the market, and thus the number of alternatives available, we have little, if any, ability to abuse anyone. We can only make a deal when both the shipper and carrier are ready, willing, and able. And, as I said above, our policy is to stand behind the deals we make even when one of the other parties do not.

We believe that by avoiding double insurance and excess paperwork costs, we can provide shippers a large quantity of carrier services at highly competitive costs—perhaps 5 to 8 percent below the prices which would otherwise be available.

You may perceive that we have a little bit of "freight forwarder" in our blood, in that we assume far more responsibility than is entailed in the classic model of the broker. Recognizing this, we vigorously supported the Surface Freight Forwarder Deregulation Act of 1986. We are very pleased to now have the option available to us of acting as a freight forwarder, while maintaining the flexibility and efficiency we learned in the exempt transport sector.

We assume total process control. Simply stated, the shipment, regardless of its size and contents throughout its journey, never leaves the control of Robinson. Our electronic tracking and information system monitors the shipment all the way to destination.

With this background, I want to make a few basic points about the attempts to reregulate transport brokers at the Commission which may be renewed before this Committee.

First, we developed our traditions of financial and operational responsibility entirely without any federal regulatory stimulus. We do business the way I have set out because we find a reputation for commercial responsibility financially rewarding. Were we tempted to stray, we would be subject to court-administerd commercial law brought into play by knowledgeable trade partners and their private attorneys. We find ordinary commercial remedies superior to regulatory systems of the sort administered by the Interstate Commerce Commission in securing fair play from trade partners. And we believe those remedies are adequate to restrain us from temptation as well.

Second, operational flexibility when combined with commercial responsibility is at the core of successful transport brokerage. The broker makes his living by meeting the complementary needs of shipper and carrier faster and better than they can meet those needs unassisted. If you start wrapping the third parties up in paperwork and having them make obligatory checkmarks on some regulatory notepad every time they make a telephone call, you have deprived them of much or all of their comparative advantage. If ever the Congress were to direct the Interstate Commerce Commission to require third parties to start publishing profit margins as if they were an electric utility, take some special precaution about credit terms, not deal with customhouse brokers on the same terms as other transport specialists and the like, you would simply start writing us out of business.

Third, if the Congress or the Commission were to start restricting third party operations, that would do a great disservice to thousands of carriers and shippers who understand how to deal with ordinary commercial law and find brokerage an important service. We have supported thousands of carriers for operating authority. We provide thousands of carriers with effective marketing assistance at times when they would otherwise be stranded in the market. We have long standing relationships with carriers built on years of mutual benefit. We provide hundreds of ship-

pers timely, reliable service at rates finely tuned to the market's balance of supply and demand. We guarantee in writing all of the following:

1. We assume responsibility for loss and damage claims on cargo.
2. We guarantee to pay the carrier promptly whether we are paid or not.
3. We assure our customers that they will never be billed back by a carrier for any additional charges.
4. We only use carriers that have in excess of $75,000 cargo, $750,000 public liability, and adequate workmen's compensation insurance.
5. We guarantee that all carriers that we use have their insurance on file with us, and that they are up-to-date and current.
6. We require our carriers to assure that all drivers picking up product at our customers' facilities are properly qualified by DOT standards.
7. On all loads, we send out a computer generated contract confirmation of price and services to all concerned parties.
8. We guarantee that Robinson has an additional cargo policy covering loads in the event the carrier's insurance is inadequate.
9. That all business conducted by Robinson will be legal and in accord with government rules and regulations.

In our opinion, much of what we saw at tne Commission in the Senn proceeding, an unhappily fear we may see before this Committee, amounts to one of the most debilitating legacies of the regulated transport sector. For generations, "regulated" carriers have been accustomed to using Congress and the Interstate Commerce Commission as "Big Daddy." Such carriers wanted you to keep prices above competitive market levels. They have wanted you to impede market entry, and otherwise to spare them from ordinary healthy competition in hundreds of particulars.

Immediately upon your declining to cater to these entreaties for legislative and regulatory intervention in the 1980 Motor Carrier Act, transport became noticeably more competitive, economical, responsive, and efficient. We have witnessed that every day in our own interface with the market throughout the nation.

It's hard to sympathize with anyone who would sign over a valuable shipment or truck without checking references, particularly in these times with skyrocketing insurance costs and a high percentage of carriers running bare. There are about 4,000 transportation brokers in business today.

My suggestion is that shippers view broker relationship as long-term partnerships. They should take the time to check references. They should call the broker's banker to see if he is financially stable, call his customers to see if he delivers on time and how he handles claims. They should ask other carriers about the broker's payment policy, double check on the amount of insurance a broker carries. This is only common sense business practice. They shouldn't feel they can depend on the government to do this for them.

These carriers have yet to be weaned away from their regulatory security blankets. They just haven't learned to grow up enough to undertake the benefits and burdens of an ordinarily competitive market. It is long past time they did so.

This brings me to my final point. We're doing things differently today in transportation. The marketplace is more competitive than ever. Companies are just beginning to realize the importance transportation plays in competition. Creative transportation can add value to a product. Efficient transportation can exert a strong influence on cost.

It's more important today than ever before for people in transportation to be open-minded, flexible, and careful in the way they buy and organize transportation services. Deregulation changed our careers, our prospects, and our industry, but did not change good business practices. We will be available to answer any questions which the Committee might have.

Senator EXON. Thank you, Mr. Kotzen.

Mr. Lee.

## STATEMENT OF TIMOTHY LEE, VICE PRESIDENT, SUPERIOR TRANSPORTATION SYSTEMS, INC., ACCOMPANIED BY ROBERT GALLAGHER, GENERAL COUNSEL, TRANSPORTATION BROKERS CONFERENCE OF AMERICA

Mr. LEE. Thank you, Mr. Chairman.

My name is Tim Lee. I have with me Mr. Bob Gallagher, who is the General Counsel of the TBCA, and he would be happy to

answer any questions after I have provided the summary of our written statement.

As mentioned, I am the Vice President and half owner of Superior Transportation Systems—STS. I am also a member of the Transportation Brokers' Conference of America, the trade association representing the brokerage industry and over 1,400 of the over 6,000 ICC licensed transportation brokers.

STS, my own company, was founded in the wake of the Motor Carrier Act of 1980. We believe that the Motor Carrier Act of 1980 was clearly the engine of improvement that was sorely needed to change the way we think about trucking and transportation in general.

Today, my company employs over 70 people full-time and has grown from less than $750,000 in annual sales in our first year of operation in 1980 to over $30 million projected for the current fiscal year.

In addition to our contract warehouse, crossdock, railcar management and regular routing of TOFC, rail, and LTL traffic, STS routes over some 30,000 truckloads of freight annually.

The reason for our success has clearly been the relaxed rules for entry into brokerage, made possible by the Motor Carrier Act of 1980. The unique and efficient services we offer the transportation marketplace today absolutely requires the freedom of contract and merchant-to-merchant type freedom of management available under general commercial law, absent restrictive agency regulation.

This oversight hearing marks the first occasion on which Congress has specifically directed its attention to the brokerage sector of the surface transportation industry. We are delighted to have an opportunity to reaffirm to the Legislature the success of the most dynamic new element in the transportation system, the professional transportation broker.

We have no doubt that once those concerned are fully informed, we will see the wisdom of the course of liberalization, which the ICC began in 1979, Congress approved in 1980 and reconfirmed in 1986, and the Commission continued in its 1986 decision in the Senn Trucking Case.

A recent TBCA survey indicates that TBCA members alone process over $2.5 billion in transportation revenues annually. An upper estimate for all transportation intermediaries would be in the $20 billion range. Either estimate represents literally millions of shipments annually.

The rapid growth of our industry thus far could have occurred only because of the great market demand for our product. Since brokerage is a "middleman" type service, the demand must necessarily come from both factions of the market, the shipper faction and the carrier faction.

As to the payment by brokers to carriers, some bill the shipper and pay the carrier. Others are paid by the carrier on a commission basis. Some are paid by the shipper on a commission basis. A single brokerage firm may use all three forms of payment.

As to both payment and other terms of service, as in any other conventional area of U.S. commerce, the multiservice broker obvi-

ously must have considerable contractual freedom to perform a wide variety of functions and services.

As mentioned, the TBCA is the association representing the transportation industry's brokerage industry. TBCA conducts geographically distributed quarterly educational seminars and conferences. The TBCA has actively participated in educational sessions with several carrier groups, including the National Industrial Transportation League and the ATA. TBCA has created a manual for transportation brokerage. It has founded the Transportation Brokerage Institute, which conducts educational programs for individuals leading to certification.

TBCA assists in avoiding and resolving trade disputes through its arbitration process, available to brokers, shippers and carriers. TBCA has established a "data base" in which complaints concerning broker performance are lodged, and that other brokers and carriers can access.

The TBCA adamantly pursues making "payment of uncontested freight bills" a "precondition" to maintenance of membership in good standing. TBCA has delisted no less than 25 firms for failure to meet its ethics requirements in just the last two years.

TBCA encourages and supports the "Red Book," a commercial service providing financial soundness ratings of shippers and carriers, and now brokers. Few associations that I am aware of have gone so far as to encourage this degree of integrity in their membership.

In the Senn proceeding, the Commission wisely declined to be drawn into the market handicapping proposed by those complaining. This would be inconsistent with the thrust of legislative deregulation in the Motor Carrier Act of 1980, the Freight Forwarded Act of 1986, and the very merchant-to-merchant free enterprise environment upon which this country was founded.

In the Senn proceeding, the Commission, in effect, directed the complaining carriers to look to the marketplace and court remedies that are routinely utilized by myriads of firms in the general commerce of the United States. This hearing in particular, brings a real life situation to my mind, where one of my own employees disregarded internal credit policy and allowed us to continue accepting freight from one of our larger shipping accounts beyond its internally established credit line.

This particular account was a fairly sizeable manufacturer of disposable diapers based in San Diego, California. To make a long story short, my organization lost just short of $90,000 as a result of this account filing for Chapter VII in late 1986.

I feel this situation is particularly applicable to this hearing for several reasons.

Number one, while we were obviously upset with the particular representatives of this shipping account that convinced my employees that "they were good for the money," the resulting loss from this ordeal was clearly the fault of my own employees.

Point two, we did not point the finger at the general "shipping public," nor did we ask Congress to protect us from our own failures. We pointed the finger at ourselves for our neglect of simple and prudent credit policies.

The third point is that we did not hold payment to the carriers that transported this particular traffic that STS was not paid on by it's customer. We, in fact, as standard carrier payment policy, paid these carriers within 15 days of transport, long before we are typically paid by the majority of our shipping account base.

Point four, this was the first time through nonpayment that my company had ever lost more than $1,000 or $2,000 from a single company. I can now assure you, however, that this will be the last time. The individual disregarding company policy is no longer with us.

I would point out, though, ironically, of those instances where we are not paid, in over 50 percent of the instances experienced by my company, licensed motor carriers were the responsible party for payment. And, of the estimated 15 million transactions that brokers handle annually, if the ICC's figures of 600 complaints is anywhere near accurate, this represents less than one complaint per 25,000.

In closing, we would like to extend our appreciation for Congress conducting legislative oversight in an effort to keep abreast of trade developments. However, we trust Congress will not allow a small minority of motor carriers that have failed to incorporate basic, sound business prudence into their operations, to turn back the hands of time and reshackle one of the most dynamic, innovative, and emerging forces in modern day transportation.

Thank you.

[The statement follows:]

STATEMENT OF TIMOTHY H. LEE, VICE PRESIDENT, SUPERIOR TRANSPORTATION SYSTEMS, INC.

I am the Vice President of Superior Transportation Systems, Inc. (STS), one of the nation's leading domestic transportation brokerage companies. I am also a member of the Transportation Brokers' Conference of America, the trade association representing the brokerage industry and over 1,400 of the over 6,000 ICC licensed transportation brokers. I will summarize the TBCA statement, previously submitted to you, in my oral statement.

STS was founded in the wake of the Motor Carrier Act of 1980. In fact, the application filed by STS' affiliated motor carrier, Shippers' Freight Services, Inc. in 1980 for contract carriage authority to serve STS became the landmark decision that confirmed Congress' intentions as to the definition of a shipper and the proper role of a broker in the "Dixie Midwest" proceedings. The Motor Carrier Act of 1980 was clearly the engine of improvement that was sorely needed to change the way we think about trucking and about transportation in general.

Today, STS employs over 70 people, full-time, and has grown from less than $.75 million in annual sales our first year of operation in 1980 to over $30.0 million projected for our current fiscal year. Today, in addition to our contract warehouse, crossdock, railcar management and regular routing of TOFC, rail and LTL traffic, STS routes over some 30,000 truckloads of freight annually.

My. purpose in describing for you the success of my own company is to point out that the reason for our success has clearly been the relaxed rules for entry into brokerage made possible by the Motor Carrier Act of 1980.

The unique and efficient services we offer the transportation marketplace today absolutely require the freedom of contract and freedom of management available under general commercial law, absent restrictive agency regulation. Any retrograde movement toward close, restrictive agency regulation would threaten the foundations of our usefulness to shippers, receivers, carriers and the very "free market" foundation upon which the Motor Carrier Act of 1980 was based.

This "Oversight" hearing marks the first occasion on which Congress has specifically directed its attention to the brokerage sector of the surface transportation industry. We are delighted to have an opportunity to re-affirm to the legislature the success of the most dynamic new element in the transportation system—the "Trans-

portation Broker". We understand that the hearing is called, at least in part, because of complaints that the ICC has not propounded regulations which some in the carrier community have sought from it.

The mere thought of returning to cumbersome regulations is anathema to an industry sector which has been allowed to prove its worth to the transport community as a result of gaining freedom from anti-competitive, outmoded, unnecessary regulation. We hope and trust you will take time to learn about our trade sector before encouraging or condoning any attempt to "re-restrict" it.

We have no doubt that once those concerned are fully informed, we will see the wisdom of the course of liberalization which the ICC began in 1979, Congress approved in 1980 and 1986, and the commission continued in its 1986 decision in the Senn Trucking case.

The Brokerage industry has grown so fast that a precise number of the billions of freight dollars brokers handle annually at this time is unknown. A recent TBCA survey indicates TBCA members alone process over $2.5 billion in transportation revenues annually. An upper estimate for all transportation intermediaries would be in the $20 billion range. Either estimate represents million of shipments annually.

No one knows how large a role brokerage will play in the "general freight market". We ask Congress that they allow the "market", not a few disgruntled motor carriers, to determine the level of participation the professional transportation broker will play in the dynamic field of transportation.

The rapid growth of our industry thus far could have occurred only because of the great market demand for our product—a demand previously pent up by restrictive regulation. Since brokerage is a "middleman" service, that demand must necessarily come from both factions of the market—the shipper faction and the carrier faction.

TBCA's membership roster demonstrates that brokers flourish throughout the Union. While there are a few large brokerage firms with complete nationwide networks of offices, the vast majority of brokerage firms are small business entities. A recent TBCA survey of members indicates that its members average about six employees and move less than 3,000 loads annually.

In the Senn proceeding, the ICC stated and confirmed quite accurately that the transportation brokers: "provide valuable information to carriers on price and service availability, they daily arrange for the pickup and delivery of freight, and participate in scheduling, collection, billing, damage evaluation and other functions. They serve as a valuable information source, offering shippers an additional tool for obtaining reasonable transportation service, and provide carriers with an additional source of traffic which can help carriers improve balance in their traffic lanes."

Brokerage companies perform many more functions than most people are aware of. The TBCA statement spells out some of the diversity in the brokerage community.

Brokers operate in a variety of contractual modes. As to payment, some bill the shipper and pay the carrier. Others are paid by the carrier on a commission basis. Some are paid by the shipper on a commission basis. A single brokerage firm may use all three forms of payment. As to both payment and other terms of service, and as in any other conventional area of U.S. Commerce, the multi-service broker obviously must have considerable contractual freedom to perform a wide variety of functions.

As indicated, the TBCA is the Association representing the transportation industry. The education function is one of the most important functions performed for this young industry. TBCA conducts geographically distributed quarterly seminars and conferences. Such seminars and conferences bring together brokers, interested shippers and carriers. Topics cover such essential matters as broker selection, billing practices, claims handling, maintenance of sound carrier relationships, financial management, credit practices, sales and marketing and other areas necessary to operate as a professional in the field.

The TBCA has actively participated in educational sessions with several carrier groups, and the National Industrial Transportation League, as is spelled out in the TBCA statement.

Pursuant to its educational commitment, TBCA has created a manual for transportation brokerage. It has founded the Transportation Brokerage Institute, which conducts educational programs for individuals leading to certification. TBCA is creating a reference library, to provide ready access to all persons interested in brokerage related written materials.

TBCA assists in avoiding and resolving trade disputes through its arbitration process, available to brokers, shippers and carriers. TBCA has established a "data base" in which complaints concerning broker performance are lodged.

The TBCA adamantly pursues making "payment of uncontested freight bills" a "precondition" to maintenance of membership in good standing. TBCA has de-listed no less than 25 firms for failure to meet its ethics requirements. TBCA encourages and supports the "Red Book", a commercial service providing financial soundness ratings on shippers and carriers. Few assocations have gone so far as to encourage this degree of integrity in their membership.

However, no trade sector could grow so fast, in so crowded, competitive, and tradition bound a field as transportation, without attracting criticism. The Interstate Commerce Commission collected and reviewed such criticisms in the *Senn* proceeding. This hearing, as in the *Senn* proceeding, was instigated by a very small minority of carriers that allege that there is a disproportionate amount of financial irresponsibility in the transportation brokerage community, that brokers have "cornered" important quantities of freight, such as government traffic, that brokers encourage carriers to violate safety regulations, that broker contracts are various and non-standardized, and that the brokerage industry's self-improvement programs are ineffective.

Among other reasons, the ICC correctly perceived these complaints of these carriers as a means to use the regulatory process to strengthen the bargaining process in those situations where brokers and carriers are, to some extent, competitors in the marketplace.

The Commission wisely declined to be drawn into a market handicapping function inconsistent with the thrust of legislative deregulation in the Motor Carrier Act of 1980, the Freight Forwarded Act of 1986, and of the very free-enterprise environment upon which this country was founded.

In the Senn proceeding, the Commission, in effect, directed the complaining carriers to look to the marketplace and court remedies that are routinely utilized by myriads of firms in the general commerce of the United States. In so doing, the commission pointed out that: Carriers are no more obliged to deal or do business with slow paying or financially unsound brokers than they are obliged to deal or do business with slow paying or financially unsound shippers.

This brings to mind a very real life situation I experienced with my own company just last year, when one of my own employees disregarded internal credit policy and allowed our southern California branch office to continue accepting freight from one of our larger shipping accounts beyond its internally established credit limit with STS. This particular account was a fairly sizable manufacturer of disposable diapers, based in San Diego, California and was owned by an even larger conglomerate based in Canada. Long story short, my organization lost just short of $90,000 as a result of this account filing Chapter 7 in late 1986. I feel this situation is particularly applicable at this hearing for several reasons:

One. While we were obviously upset with the particular representatives of this shipping account that convinced my employees that "they were good for the money", the resulting loss from this ordeal was clearly the fault of my own employees for not following very clear, pre-established and sound internal credit policies.

Two. We did not point the finger at the general "shipping public". We pointed the finger at ourselves for our neglect of simple and prudent credit policies.

Three. We did not hold payment to the carriers that transported the particular traffic that STS was not paid on by this account—we, in fact, as standard carrier payment policy, had paid these carriers within 15 days of transport, long before we are typically paid by the majority of our shipping account base. Had we not paid these carriers, this could have very easily placed one or two of the smaller carriers transporting this traffic in financial jeopardy.

Four. This was the first time through non-payment that STS had ever lost more than one or two thousand dollars from a single company. I can now assure you, however, that it will be the last time. The individual disregarding STS' company policy in this instance is no longer employed at our firm. I would make note here, ironically, that the majority of incidents where STS has not been paid by an account has been where a licensed motor carrier was the responsible party for payment.

Very simply put, the prudent exercise of business judgment is required in any line of commerce. Equally fundamental is the fact that federal and state courts are available to remedy failures of contractual or other obligations as may occur. And, I may add, ICC receipt of 600 or so complaints from millions of brokered transactions—most of those compliants not involving brokers—is no indication of any failure of the market or the court system.

As for the continued efforts of the TBCA in this regard, we have researched and are considering administering several security instruments that could be used in lieu of the currently very controversial surety bond the ICC now requires all licensed brokers to maintain. We have, in fact, petitioned the ICC to adopt our pro-

posal for usage of these alternative instruments. Unfortunately, the ICC has not yet given a conclusive response to our petition.

In the same light, as fundamental financial responsibility, how can carriers possibly excuse their own lapses in safety compliance by seeking to blame either shippers or brokers? The carrier has the responsibility to say "no" if any shipper, broker, owner operator or employee suggests violation of safety regulations. And, we would expect and assume that if a shipper or broker conspires with a carrier to violate safety regulations, they too would be subject to sanction.

As to the claim that broker industry self policing has been ineffective, in the Senn proceeding, the Commission noted several of the TBCA programs previously mentioned.

We would add to those observations that TBCA has gone far beyond any actions taken by the American Trucking Associations to assure financial responsibility of its members, and has challenged the ATA to do as much as the TBCA to clean its own house in our written comments to the ATA in January of this year, concerning the report of the "Blue Ribbon Task Force on Economic Regulation".

In making this statement, I wish to point out that the TBCA, and myself, have a great respect for ATA and many of their programs. We look forward to working with their current President in developing programs for mutual benefit.

In closing, we would like to extend our appreciation for Congress conducting legislative oversight in an effort to keep abreast of trade developments. However, we trust Congress will not allow a small minority of motor carriers that have failed to incorporate basic sound business prudence into their operations to turn back the hands of time and re-shackle one of the most dynamic, innovative and emergent forces in modern day transportation.

Thank you for your time, Mr. Chairman, I would be happy to answer any questions you might have at this time.

Senator EXON. Thank you very much, gentlemen.

You heard the previous witnesses say extremely kind and, I assume, accurate things about each of you and your organizations. There did not seem to be any quarrel. I think what they were basically saying is if everybody operated like you did, we would not have a need for this hearing and we would not have a need for the ICC to become more involved than they already are.

Let me ask you this question.

Do you feel that the ICC has operated in conjunction with the law and in a prudent fashion with regard to the problems that we have been discussing here this morning? Any of you may respond.

Mr. LEE. My feeling is that the ICC has reacted as they were instructed to do by particularly the Motor Carrier Act of 1980 to really open up the transportation industry to a more free market environment.

So I don't have any complaints with what the ICC has in that regard.

Senator EXON. Do you have any knowledge, Mr. Lee, with regard to the ICC actions, with regard to captive shippers on railroads or the ICC's actions in the hasty approval of some regional railroads?

I don't know whether you are in the trucking business. Do you have any views on that?

Mr. LEE. I would refer that to Mr. Gallagher.

Mr. GALLAGHER. No, Senator Exon. I really do not believe that that is within the area of our competence.

Senator EXON. Okay. There are some broad disagreements that many of us have with the ICC. We don't mean to condemn them across the board for everything, though.

Mr. Seaton and others on the previous panel testified in favor of requiring brokers to establish escrow accounts to insure that carriers are paid for their services.

Once again, your testimony today, the testimony from you and your organizations and from others indicate that that would not be necessary because you follow standard business procedures. But I would like your reaction to the discussion that we have had here with regard to the fact that you are the "Mr. Goodguys" but 90 percent of the problems out there are associated with people that you have no direct connection with and, therefore, would not be subject to or responsive to the self-policing mechanism that you advocate.

Mr. KOTZEN. May I take that one?

Senator EXON. Yes, Mr. Kotzen.

Mr. KOTZEN. I think one of the things that we have done with our company is prior to 1980, we were always in a deregulated field, basically, agriculture, or agricultural commodities or commodities that were exempt from the ICC jurisdiction.

Believe it or not, the marketplace takes care of a lot of the problems that Mr. Seaton is talking about. We have been in business since 1905, basically in an unregulated atmosphere for all those years, and we have had no trouble in increasing our business or doing business in a business-like manner. I could venture that there would be any amount of businesses, whether it would be in the trucking business or any business, where you would find there are some grey operators. I don't know that it is the position of the government to insure everybody's credit.

Mr. GALLAGHER. Senator Exon, if I may be heard on that point, it has been brought out here frequently that membership in the TBCA has now become something of a status symbol in the brokerage industry because it shows an adherence to ethical standards.

If we have been able to establish that and have our own self-policing provisions within TBCA, we may well make that one of the cards that somebody will have to present when they come in, that they are members of a self-regulating organization.

So, self regulation within an industry takes a certain amount of time to win acceptance from the parties who participate in the industry. But I think in the short period of time in which we have been an active player in the transportation industry, that which we have done bodes well for the future of self-regulation within our organization and ultimately within all of the third party or intermediary parties.

Senator EXON. Gentlemen, it seems to have been established here this morning, and I am wondering if you agree, that there is a high turnover rate of people getting in and out of the regulated broker's business. Do you agree with that? That is number one.

Number two, don't you think that that presents more of a problem that we have to deal with?

Mr. LEE. I would like to address that, and I don't know that I would agree with the numbers that were presented by the previous panel, but I will not disagree that there is going to be a turnover in any type of industry where it does not take an awful lot of capital to get started. It's much like an owner-operator. If he can show that he can make a payment on a new truck, he can go ahead and get a truck and get into business. It's much like a motor carrier, where he is not required to buy the equipment; he can use an owner-operator.

My personal feeling is that I don't see that there is a significant difference in this particular industry than in any other.

Senator EXON. What are your views with regard to the adequacy of the $10,000 surety bond? Once again, I want to ask the question because I am not sure that I got an answer to it. How do you feel about the escrow account?

Mr. LEE. I would like to answer that directly.

That would hamper my business considerably.

Senator EXON. What would hamper it—the $10,000?

Mr. LEE. No, the escrow, the escrow arrangement.

Senator EXON. How would it hamper it?

Mr. LEE. Well, right now, for example, our receivables from our shipper base are turning right at about 31 days. Our payables to carriers turn every 18 days. The amount of business we do, some $2 million to $3 million a month, allows us to obtain bank financing on our receivables, with which we pay our carriers earlier for. We not only pay them within 15 days, but in many cases, in about 30 percent of the transactions we actually advance them cash on a particular load on the very day that they pull that load.

Putting accounts into escrow would completely eliminate our ability to do that.

Senator EXON. It would tie up too much of your capital.

Mr. Kotzen?

Mr. KOTZEN. We also do an awful lot of advancing, and we always seem to pay our carriers long before we get paid. We have a company rule that if a driver or a company presents their bill at any one of our 52 offices, we pay them immediately upon receipt of that, and we then invoice the customer and hold the credit.

Another thing that is happening in the industry, Senator, especially in the transportation industry, is that we are starting to be asked to perform more duties electronically. Kind of a buzz word in the industry is "EDI" or electronic data interchange.

More and more of our larger shippers are asking us to perform some functions electronically, one of which is the payment of their bills. So I know from our own experience that if we had to get into an escrow account and doing business with over 250,000 carriers on record, if we had to set up escrow accounts in that amount with the amount of business that we do, it would almost be an unmanageable thing.

We are also getting requests from some of our larger shippers to pay for more than one file on a check. For example, they don't want to write an individual check for an individual payment. They want to hypothetically write 15 or 20 payments on one check, cut down their paperwork, and/or electronically transfer the money.

I think you would find a terrible amount of shipper resistance in setting up some sort of escrow account because it would increase their paperwork and their bookwork considerably.

Senator EXON. What about the $10,000 surety bond? Is that adequate?

Mr. GALLAGHER. Senator, perhaps I could take that.

The $10,000 figure is a figure that has remained for a surprising number of years, and, really, it perhaps has its advantages and it has its detractors as well.

But the ICC has consistently held that figure, and if the figure changed, since the brokers are now putting up the $10,000 in cash in some sort of figure, what you would basically do would be to cut out new entrants into the business. It is quite a stumbling block right now. If it went up significantly, it would just about cut out the entrepreneurial people who frequently had come into the business in the early 1980s.

It is almost more of a social judgment than it is a legal or any other judgment. Whether it should be $10,000, or $12,000 or $14,000—$10,000 has worked for a number of years. It has allowed the industry to come full-fledged into transportation. There have been some problems, but we just don't know of any other particular figure that would be more appropriate.

Senator EXON. Gentlemen, I appreciate very much your coming and giving us your excellent testimony. We are going to continue to review this. If there is any time that you feel that we need more input from you, please don't hesitate to volunteer it.

Senator EXON. The Subcommittee is adjourned.

[Whereupon, at 12:00 noon, the Subcommittee adjourned, to reconvene upon the call of the Chair.]

# ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

## STATEMENT OF MATTHEW V. SCOCOZZA ASSISTANT SECRETARY FOR POLICY AND INTERNATIONAL AFFAIRS, DEPARTMENT OF TRANSPORTATION

Mr. Chairman and Members of the Committee, thank you for the opportunity to present our views on the economic regulation of freight transportation brokers. Although we did not present testimony at you Committee's hearing, we wanted the chance to make our views known and, therefore, offer this statement for the record.

Brokers are sometimes referred to as middlemen, third parties, intermediaries or facilitators. Brokers are licensed by the Interestate Commerce Commission (ICC) and arrange for the transportation of a shipper's cargo. They take a shipper's freight, find a motor carrier to haul it, and are paid a fee for their services by either the shipper, the carrier, or both. Brokers are not carriers and thus are not required to take responsibility for loss and damage or publish tariff rates.

Before discussing brokers further, we should distinguish them from other transportation intermediaries.

Surface freight forwarders of general commodities were recently deregulated. Surface freight forwarders, unlike brokers, are carriers; consequently, forwarders are required to take legal liability for cargo loss and damage. The forwarder gathers together small shipments and consolidates them into large shipments, which are tendered to a rail or motor carrier for over-the-road carriage to destination. At the destination, the shipment is separated into small shipments and delivered to the respective final consignees.

Shipper associations are another group of transportation intermediaries. They are non-regulated, non-profit organizations established by shippers who join together for the purpose of buying larger volumes of transportation (at lower rates than they could obtain individually), thus reducing members' transportation costs. They are not common carriers and are exempt from ICC regulation.

The shippers' agent is yet another form of transportation intermediary. Shippers' agents are exempt from ICC regulation. They are retailers placing themselves between the shipper and the railroad. Shippers' agents are not carriers, have no liability, and are not required to publish tariffs. They receive a commission from the shipper for arranging for transportation service, usually by TOFC/COFC.

It should be noted that many of the distinctions between the various types of intermediaries are largely a function of the strict regulation to which they were subjected over the years. Since deregulation, these differences have blurred a great deal and, in fact, some brokers also operate as shippers' agents and freight forwarders.

Brokers are fast making their mark on the transportation industry. Since the deregulation of the motor carrier industry in 1980, the number of brokers has grown from about 100 to approximately 6,000. Between October 1986 and March 1987, the ICC issued almost 850 grants of new authority.

Why the significant growth rate and burgeoning demand for broker services? With the doubling of the number of ICC certificated motor carriers, many shippers found themselves confused by the myriad rates and services that suddenly became available. Small shippers, in particular, often lack the transportation management staff and expertise required to stay abreast of the many changes occurring in the transportation environment. Many shippers, large and small, have turned to brokers in lieu of creating or expanding their own traffic departments. Some brokers, working on behalf of a shipper, do a job similar to that of a traffic manager—selecting modes and carriers, negotiating rates, finding owner-operators, checking a carrier's insurance and operating authority, and so forth. Furthermore, brokers today serve far more than just the smaller shippers. A look at the client list of some of the larger brokerage companies shows a fair representation of the Fortune 500.

Similarly, some brokers act as a supplement to the motor carrier's sales force or marketing department. In the case of many small carriers and independent owner-operators, the broker is the marketing department. Brokers consolidate an increasing number of less-than-truckload (LTL) shipments (often by "topping off" loads), arrange to fill otherwise empty backhauls, and help the trucking industry to operate

more efficiently. Brokers and other third parties are providing important services to small shippers and carriers in today's less regulated environment.

Although the traditional transportation matchmaking service of putting carriers and shippers together to make the process of moving freight more efficient forms the basis of most brokers' business, it is no longer the only service offered. The majority of brokers today provide a wide variety of transportation and distribution services in addition to arranging the linehaul movement. These other services can include arranging LTL transportation to a wide goegraphical area, providing warehousing and local distribution services, consolidating freight, tracing shipments, auditing waybills, and assisting shippers with claim filing.

Yet, despite the growing popularity of brokers with large and small companies alike, allegations have surfaced indicating that some brokers have engaged in unethical and disreputable practices. Analogously, we also hear of abuses by motor carriers against owner-operators and shippers. However, we do not believe the abuses of a few should tarnish the record of an entire industry.

Shippers planning to use a property broker, especially for the first time, may be understandably apprehensive because of these allegations. However, certain criteria can be applied to aid the selection process. Carriers and shippers should exercise care in selecting a broker—just as they do regarding the purchase of any other important product or service. We believe the marketplace, including comparison shopping and the word-of-mouth sharing of customers' experiences, punishes "bad actors" far more effectively than strict regulation.

In addition, the Transportation Brokers Conference of America (TBCA or Association), with about 1,400 members, is a group strongly dedicated to enhancing the performance and reputation of the brokerage industry. For the TBCA, "image enhancement" means much more than "public relations" in its narrow sense. All TBCA members must subscribe to a strict code of ethics, and the Association maintains a variety of on-going efforts to maintain high standards of broker service and deal with problems as they arise.

As part of this program, TBCA has launched a broker certification program setting standards of conduct, knowledge, and ethics for brokers to improve trade practices on a voluntary, but organized basis. In addition, the Association maintains a data base containing pertinent business information about its members. Use of this data base is available at no cost to the general transportation public, and it should be a valuable tool for shippers and carriers to use in evaluating brokers.

Moreover, the TBCA Ethics Committee has developed producers for handling complaints and mediating disputes. Finally, if a pattern of violations develops and cannot be addressed by less severe actions, the Association will remove the "bad apple" from its membership. A TBCA spokesman reports that the association has already ejected about 25 firms after complaints concerning inappropriate behavior.

As in any industry, dealing with members of a leading trade association does not necessarily guarantee customer satisfaction. Conversely, brokers who are not TBCA members are not necessarily unethical or disreputable. However, as noted above, dealing with a TBCA member can provide a shipper or carrier with significant benefits.

The Small Business Administration (SBA) will be doing a study of the broker industry to determine the number of brokers and their size distribution, volume of business, geographical regions served, and so forth. As a part of the study, SBA will be surveying a sample of shippers and carriers to determine to what extent they find broker services advantageous or disadvantageous. We believe that we will know significantly more about this industry and its practices upon the completion of the SBA study.

Furthermore, since freight forwarders were deregulated last year, we believe that brokers, too, should be completely deregulated. While there are relatively few remaining regulatory restrictions on brokers, we believe that they should be afforded the same opportunities as freight forwarders and should be able to thrive on their own merits—on the basis of what service they *do* offer, not what service they are allowed to offer. Consequently, deregulation of freight brokers is included in the ICC Sunset bill included as title IV–C of the Administration's "Trade, Employment, and Productivity Act of 1987" (S. 539, H.R. 1155).

In short, we believe the rapid growth of the broker industry has been a healthy development which has increased the efficiency of freight transportation.

## STATEMENT OF GREG P. STEFFLRE

### IDENTITY OF WITNESS

My name is Greg P. Stefflre. I am the Vice-President, Law of Rail Delivery Services, a southern California motor common carrier located in Long Beach, California. I am also General Counsel to the Committe of Six, the intermodal motor carrier trade association for southern California. I am authorized by my company and the Committee to offer this statement.

### IDENTITY OF GROUP

The Committee of Six is a regional group of intermodal motor carriers who are a representative cross section of carriers within the Southern California marketplace. Many of the members have offices in the Northern California as well. The Committee is in it's sixth year of operation and engages in programs and activities which foster professionalism and which propagate efficiency of operations, enhance quality of services, promote safety and the development of new technology, secure predictability in the manner of performing the members services and reduce the costs of operation so that the industrys consumers are directly benefitted.

### IDENTITY OF THE BUSINESS

Members of the Committee provide their services as regulated motor carriers (herein, "draymen") to shippers, consignees and third party freight arrangers. The preponderance of such freight which our members deal with, is controlled by third parties, such as shippers agents, freight forwarders, freight brokers, consolidators and shipper's associations.

These freight arrangers choose the carriers, approve the costs and agree to pay the drayman's bills. They, effectively become our customers. They bill the costs of the entire coast-to-coast move to the shipper an are responsible for distributing the proceeds of that billing to the involved carriers. In our marketplace, typically, the freight movement consists of three or more carriers: an originating drayman; a origin railroad who receives the loaded trailer from the originating drayman; one or more interconnecting railroads an the destination drayman who accepts the shipment from the last rail carrier and delivers same to the ultimate consignee.

Typically, the third parties funnel all contact with the customer through themselves and exercise complete control over the freight shipments. There is almost never any relationship developed between the drayman and the actual owner of the goods shipped.

The members of the committee transport about 2400 trailers daily. We estimate that 50% or more is freight controlled by third party freight arrangers. We assume, based upon our knowledge of the industry, that northern California has an equivalent situation. Thus, the cash volume in California among just these trade association members easily exceeds 220 million dollars annually.

### THE PROBLEM

By far, the vast majority of professional freight arrangers conduct their business in a reasonable and honorable fashion. Organizations such as the Intermodal Marketing Association (formerly known as the National Association of Shippers Agents) expend substantial and continuing efforts toward a fluid and well functioning intermodal transportation plan. There is however a substantial number of freight arrangers who do not share the IMA's ethical approach to freight arrangement. A plain fact of current market condition is that there are all too many shippers of freight who are considering only price in shipping their goods. Thus, the professional third party often cannot compete with the "cut rate" operator who underbids the costs, only to get the freight and to thereafter cheat the various sub-haulers out of their earned revenue so that it's otherwise unprofitable operation actually "makes" money.

As a partial result of this conduct, in the years since deregulation, there have been so many failures, defaults, or simple business abandonments by third parties (with consequent losses suffered by draymen), that those draymen who have survived have generally chosen to diminish the percentage of third parties with whom they do business, thereby reducing their chances of loss from these unregulated and potentially unstable entities.

There is no empirical manner of determining the quality of a third party, upon their tender of business, since they are unregulated, unlicensed and more often than not mere corporate shells. Thus the raw data with which to make an informed

credit decision, is often completely absent. Add to that, the fact that the third parties are often on the other side of the country, in areas where local Southern California draymen have no contacts to determine their status in their community.

Since entry into this field is without restriction, many unscrupulous parties whose businesses have previously failed, have simply started new corporate entities, hidden their involvement, and continued to abuse the drayment.

Our committee members attribute about 70% of their "bad debts" to third parties who are intentionally depriving their draymen of earned income.

EMPIRICAL EXAMPLES

The following examples depict some general methods by which draymen are victimized by third parties:

"Tough luck, we're out of state and it's too expensive to chase us for your money." (herein "TLWOOS") Under this scenario, the third party ignores paying you until you threaten to stop service and then they simply refuse to pay. They are located out of state and, most times, the bill is insufficient to get into United States District Court so, if you sue, you do it in state court, serve them under the "long arm" statute and, if you can perfect your judgment, you then seek to make it a "sister state judgment" and thereafter enforce it in that state. All of these procedures are so time consuming and costly that, for the most part, you would never get more than 10% of your bill.

"Our agreement with the shipper is that they will pay these charges." (herein, "Bill the Shipper") Under this scenario, the third party declines to pay portions of a submitted bill and demands that you re-bill the shipper or consignee. Obviously, the drayman has no contract with either of these parties nor legal right to collect from them and when they refuse to honor your bill, you end up chasing the third party who may assert the "TLWOOS" defense.

"Approve and Die" Under this gambit, the guy with the third party who approved your bill is either dead when you present your bill or has moved (whereabouts unknown) or was "never there" and under any such construction the drayage bill is not honored.

"OOPS, you billed the wrong company (office)!" Here, you are hired by one company (or office) and at the time you are trying to collect your bill, are advised (after countless telephone calls) that you have billed the wrong branch, division, office, etc. of their company so you will have to rebill the other company. This little gambit will quite neatly spread out the payment cycle by six months or more. What's really cute is that, often, the rebilled office simply approves the bill and sends it back to the original office for approval. One mid-west company has two differently named divisions whose accounts payable desks are next to each other in the same office, yet they send the drayman's bills back suggesting that they bill the guy at the next desk.

"We don't pay accessorial charges!" An accessorial charge is a charge for storage or equipment use made by railroads which is in addition to the ordinary freight charges. Up until 1985 most of these charges were billed to the third parties and/or shippers. However, in 1985 most railroads had a simultaneous "bright idea";" . . . why not charge the drayman and he can pass it onto the third party? After all we can't collect from third parties and if we try to, they threaten to take their business elsewhere, but if the drayman doesn't pay us, we just terminate his right to interchange equipment with us and he goes out of business." Thus was born the need for draymen to pay these charges and bill them to the third parties. However, the third parties simply don't want to pay the draymen any more than they wanted to pay the railroads, and thus they refuse to pay the charges either outright (to quote one major third party" . . . we don't pay any accessorial charges.") or through the "Bill the Shipper" technique.

Obviously, these situations do not exhaust the entire market situation but I trust they provide a flavor of the day-to-day experience sufficient for the committee members to sense the problem.

SOLUTIONS

We have had but a short time to consider possible solutions to these problems. We do not want to see re-regulation but would like to see some assurance of either financial stability and honesty in those acting as freight arrangers or some control over those portions of the funds they acquire from the shippers which truly belong to others.

In that regard we propose consideration of the following measures:

A. SURETY BONDING: A regulatory requirement that all freight arrangers maintain a surety bond in a penal amount equal to 90% of their annual gross revenues which would protect the interests of motor and rail common carriers who have performed services but remain unpaid ninety days from the date of their billing.

B. TRUST FUND STATUS: Impose upon the funds collected by the freight arrangers a fiduciary status requiring that all such funds be segregated from the arrangers operating account and not otherwise co-mingled or used by the arranger. In California, we have found that such a procedure works well in the construction industry.

C. ENTRY RESTRICTION: Impose fitness related entry restrictions upon all freight arrangers.

D. DIRECT LIABILITY OF SHIPPERS: Impose direct legal liability upon shippers and/or consignees for the costs of interstate shipment of their goods. The shippers would then be more scrupulous in choosing their freight arrangers and, if held liable for a freight arrangers failure to pay proper bills, would have the right to compel indemnity from the third party contractually.

### CONCLUSION

We, in this industry, are attempting to reduce the costs of delivered freight to the ultimate consumer. At present, the problems and costs associated with freight arranger failures to pay adversely affect that effort and should be addressed legislatively.

By no means should this statement be read to accuse the entire freight arranger industry of irresponsibility. Most, long time freight arrangers continue to act responsibly. I'm quite sure that they too, would like to see some control over these irresponsible parties.

The Committee and I appreciate the opportunity to offer this Statement.

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## STATEMENT OF THE TRANSPORTATION BROKERS CONFERENCE OF AMERICA

This hearing marks the first occasion on which Congress has specifically directed its attention to the brokerage sector of the surface transportation industry. We are delighted to have an opportunity to reaffirm to the legislature the success of the most dynamic new element in the transportation system—the transportation broker.

We anticipate that that some who appear before this Committee may urge that the Interstate Commerce Commission has erred in declining to propound regulations concerning brokerage which some in the carrier community have sought from it. The mere thought of cumbersome regulations is anathema to an industry sector which has been allowed to prove its worth to the transport community precisely as a result of gaining freedom from anticompetitive and unnecessary regulation. We hope and trust that you will take time to learn about our trade sector before encouraging or condoning any attempt to restrict it. And we have no doubt that once those concerned are fully informed you will see the wisdom of the course of liberalization which the Interstate Commerce Commission began in 1979, Congress approved in 1980 and 1986, and the Commission continued in its 1986 decision in Senn Trucking Company—Lawful Practices of Property—Petition for Rulemaking, Ex Parte No. 39962 (1986).

### TRANSPORTATION BROKERAGE, 1987

Trade press and the recent decision of the Interstate Commerce Commission in Senn Trucking attest to the fact that transport brokerage has blossomed with a rapidity and scope remniscent of the early days of railroading in the 1800's, of trucking in the 1920's and 1930's, and of air travel in the 1940's and 1050's. Interstate Commerce Commission licenses to brokers of freight transportation numbered fewer than 100 prior to 1980. Such licenses number over 4900 at this point in 1987. The Transportation Brokers Conference of America had fewer than 50 active members in 1979. It has 1,428 members at this time. The brokerage industry has grown so fast that no one knows just how many billions of freight dollars brokers handle at this time. A recent survey of TBCA members indicated that TBCA members process over $2.5 billions in transportation revenues. In April of 1987 Traffic Management magazine published the results of a survey of shippers indicating that transportation intermediaries, including brokers, handled about 10–20% of the surveyed shippers' freight. If this is an accurate indicator of market participation, transport intermediaries may handle up to $20 billions of dollars annually.

At this point no one knows just how large transport brokerage will become. In the transportation of fresh produce, traditionally exempt from Interstate Commerce Commission regulation and thus a test case of market demand for unhampered brokerage services, transportation brokers accounted for about half of the shipments surveyed in 1974. Such a participation in "general commodities" transport may seem farfetched at this time. What we ask of Congress is that you let the market determine whether that level of participation is called for or not.

The rapid growth of brokerage in the "general commodities" market in the 1980's could have occurred only because there has been and is a great market demand for the product (a demand pent up by restrictive regulation prior to 1980). Since brokerage is a "middleman" service, that demand must necessarily come from both sides of the market—the shipper side and the carrier side.

Transportation brokerage has become a new domain for entrepreneurship. The vast majority of brokerage firms are small business entities. A recent TBCA survey of members indicates that the member firms surveyed averaged less than 2 years of age and employed an average of 5.7 employees. The principals in these firms averaged over 15 years in experience in the transportation industry. They are predominantly seasoned transportation people who were given an opportunity to establish their own firms when regulations restricting brokerage were eased in 1979 and 1980. Industry growth has led to an increasing number of transportation brokerage firms establishing multistate networks of offices. In addition some large shipper organizations and large carrier organizations have acquired and used brokerage licenses as incidents to their operations.

In the Senn proceeding, the Interstate Commerce Commission summarized the roles of transport brokerage thusly:

"Property brokers participate in thousands of daily transactions between shippers and carriers. They provide valuable information to carriers on price and service availability, they daily arrange for pickup and delivery of freight, and participate in scheduling, collection, billing, damage evaluation and other functions. They serve both large and small shippers, sometimes performing tasks of a small shipper's traffic department.

"In today's transportation environment, brokers not only serve as a valuable information source, they offer shippers an additional tool for obtaining reasonable transportation service, under responsible commercial arrangements. They also provide carriers with an additional source of traffic which can help carriers improve balance in their traffic lanes. Arrangements between shippers, carriers, and reputable brokers enhance the availability of dependable, reasonably priced service to all segments of the transportation industry. In short, the explosive growth in the brokerage industry reflected a need in the surface transportation industry for innovative middlemen who aggressively identify and meet the needs of both shippers and carriers."

This accurately suggests the role of brokers in facilitating the efficient meshing of the nation's truck fleet with its transport demand, on a daily basis. The summary conveys only a fragment of the enormous scope and variety of the services performed by transportation brokerage firms. A sample, partial, list follows. Freight brokerage firms and their affiliates perform classic shipper-carrier matchups of truckload "general commodities" shipments; consolidate "less than truckload" general commodities shipments; arrange both truckload and specialized less-truckload services for agricultural commodities, as well as some other commodity specialties; monitor carrier performance, winnowing out superior performers from the less competent; provide shipment data to carriers and trace shipments for shippers; work with customs house brokers to clear imports through customs, and arrange inland transport; assist in resolving freight claim disputes; participate extensively in exempt "pibbyback" freight; perform freight bill auditing services, to assist shippers in analyzing traffic costs; conduct analyses of shipper distribution patterns, and assist in setting up distribution systems; manage warehouse operations; have designed rail cars to facilitate creation of more efficient rail and truck-rail systems; and link truck, rail, ocean and air transport, in a variety of patterns.

Brokers are rapidly becoming technically sophisticated. Many transportation brokerage firms are significantly computerized. Some firms, especially those with multiple branches, have highly sophisticated computer systems which maintain shipper files, maintain carrier files, including carrier insurance records, perform truck-shipper matches, bill the shipper, record carrier charges, perform internal accounting services, and otherwise systematize the provision for transportation service to carriers and shippers alike.

Transportation brokers serve both large and small shippers. For some larger shippers they have become partial substitutes for in-house traffic departments. But their

greatest value may be for small shippers. Transportation brokers are the shipper's shopping specialist, collecting timely price and service information. They can also consolidate shipment demands from multiple sources and thus obtain favorable carrier rates. The smaller shipper is often most in need of these services. With the transportation broker's services the smaller shipper can often compete on more nearly equal terms with larger firms disposing of larger traffic volumes.

Transportation brokers serve both small carriers and some of the largest carriers in the nation. Transportation brokers have been especially useful in securing "backhauls" for shipper-owned "private trucking" operations. But the transportation brokers' greatest value may be to the smaller carrier, for whom they can be marketing arm, advisor, payment expediter, and even sponsor for interstate operating authority. Transportation brokers give smaller carriers access to markets which they cannot afford to reach by hiring in-house salesmen.

Brokers operate in a variety of contractual modes. As to payment, some bill the shipper and pay the carrier. Others are paid by the carrier on a commission basis. Some few are paid by the shipper on a commission basis. A single brokerage firm may use all three forms of payment, as to different transactions, according to its contractual arrangements with particular shippers and carriers. As to both payment and other terms of service, the multi-service broker obviously must have considerable contractual freedom to perform a wide variety of functions.

Transportation brokers are fluid, dynamic, market directed and market driven. They are at the forefront in developing the service and price potentials of a liberated transport marketplace. They are a powerful, ubiquitous yeast essential to creating today's transportation feast. They are innovative, bold, protean market makers. Along with progressive shippers and carriers, they are trailblazing the American transport future.

### THE TRANSPORTATION BROKERS CONFERENCE OF AMERICA

TBCA is the trade association for transportation brokers. Its membership has blossomed from less than fifty in the late 1970's to over 1400 today. TBCA supports industry development in a variety of ways. The supplement to this statement sets out TBCA programs in detail.

The education function is one of the most important functions performed for this young industry. TBCA conducts geographically distributed quarterly seminars and conferences. Such seminars and conferences bring together brokers, interested shippers, and interested carriers. Topics cover such matters as broker selection, billing practices, ethics, claims handling, marketing, maintenance of sound carrier relationships, risk management, cash management, credit management, and corporate diversification.

TBCA and individual members have participated in educational sessions with the Interstate Common Carrier Conference of the American Trucking Associations, the Regional and Distribution Carrier Conference, the Oilfield Haulers Association, the Private Truck Conference of America, the National Private Trucking Association, and the National Industrial Transportation League. The association aggressively pursues expanded programs with these organizations, and other transport-oriented trade associations.

Pursuant to its educational commitment, TBCA has created a manual for transport brokerage. It has founded the Transport Brokerage Institute, which conducts educational programs for individuals leading to a certification similar in concept to the industry administered certification provided to accountants. TBCA is creating a reference library, to provide ready access to all persons interested in brokerage related written materials.

TBCA assists in avoiding and resolving trade disputes. TBCA's arbitration process is available to brokers, shippers and carriers.

Responding to concerns about poor payment practices of some firms claiming or appearing to be transportation brokers, TBCA has established a "data base" in which complaints concerning broker performance are lodged. TBCA has promulgated a broker code of ethics. The association has made payment of uncontested freight bills a precondition to maintenance of membership in good standing. Over twenty-five firms have been de-listed by TBCA for violations of the code of ethics, including failures to pay freight bills. TBCA has supported and encouraged the "Red Book", a commercial service providing financial soundness ratings on shippers and carriers, listing and rating transport brokers. TBCA is acutely aware of the need to encourage competence and commercial responsibility in this burgeoning trade sector having so many new entrants, and is working vigorously to do so. Few associations have gone so far to encourage integrity in their membership.

And of course TBCA undertakes to explain the nature of transport brokerage to shippers, carriers, the press, Administration agencies, regulatory agencies, and the Congress.

CRITICISMS OF TRANSPORT BROKERAGE AND TRANSPORTATION BROKERS

No trade sector could grow so fast, in so crowded, competitive, and tradition-bound a field as transportation, without attracting criticism. The Interstate Commerce Commission collected and reviewed such criticisms in its 1985–86 *Senn* proceeding.

Some carriers have alleged that there is a disproportionate amount of financial irresponsibility in the transportation brokerage community, that some brokers do not follow ICC regulations concerning credit terms, that brokers have "cornered" important quantities of freight, such as government traffic, that brokers force carriers to quote and use off-tariff rates, that some brokers have encouraged carriers to violate safety regulations, that broker contracts are various and non-standardized, and that the brokerage industry's self-improvement programs are ineffective.

Complainants have asked the Interstate Commerce Commission to institute new regulatory restraints on brokers. Some suggestions were that brokers explicitly be bound by Commission credit regulations, that the Commission enact into a trade rule a court ruling precluding a broker from accepting compensation from a carrier where the broker is also an employee of a shipper, that customshouse brokers not be allowed to receive compensation from brokers, and that a broker be required to disclose to all parties the total amount of its compensation. In addition, complainants would make shippers liable to carriers for payment of freight charges when the broker failed to pay the carrier, even when the broker was in effect serving as the carrier's agent, or the carrier had evidenced a course of relying on the broker's creditworthiness rather than the shipper's.

The claim or fear that transportation brokers "lock up" significant volumes of traffic is so transparently without foundation that the Commission did not even discuss it. Brokers, as third party intermediaries, must compete with direct shipper-carrier arrangements on the basis of greater efficiency. If and when they cannot demonstrate such greater efficiency they quickly are purged from the market.

Brokers have great difficulty in handling government traffic. The Department of Defense declines to use brokers on any basis allowing them to use their inherent advantages, and the General Services Administration adheres to outmoded interpretations of payment regulations which complicate payment to brokers.

The Interstate Commerce Commission correctly perceived that to a very considerable extent the complaints made to it reflected attempts by carriers to use the regulatory process to strengthen their bargaining process vis-a-vis brokers in those situations in which brokers and carriers are to some extent rivals. The Commission wisely declined to be drawn into a market handicapping function inconsistent with the thrust of legislative deregulation in the Motor Carrier Act of 1980 and in the freight forwarder act of 1986 and the free enterprise environment of this country.

As to other complaints, the Commission in effect directed the complaining carriers to look to marketplace and court remedies of the sort routinely utilized by firms in the general commerce of the United States. The Commission pointed out that carriers are no more obliged to deal with slow-paying or financially unsound brokers than suppliers of construction materials are obliged to deal with slow paying or financially shaky building contractors. The "prudent exercise of business judgment" is required in any line of commerce. And federal and state courts are available to remedy such failures of contractual or other obligations as may occur.

The Commission noted that some regulatory protections do exist, in addition to those available to other businesses, as to claims of financial "abuse"—the surety bond required of brokers, the Commission requirement that brokers register agents for service of process in states in which they operate, and the availability of the Commission's Office of Consumer Compliance to encourage voluntary resolution of disputes and to refer serious matters subject to federal law to the Department of Justice.

Carriers cannot excuse their own lapses in safety compliance by seeking to blame either shippers or brokers. The carrier has the right and responsibility to say "no" if any shipper, broker, other carrier, owner operator or employee suggests violation of safety regulations. And we would expect and assume that if a shipper or broker conspires with a carrier to violate safety regulations the shipper or broker would also be subject to sanction.

In general, TBCA believes the such statistics as are available do not indicate disproportionate commercial responsibility problems in the brokerage sector. We un-

derstand that the Interstate Commerce Commission has data from a recent period showing less than 650 complaints said to involve brokers, on a volume of commerce which cannot be less than 2 million transactions and is probably more like 10 million transactions per year. The I.C.C., we understand, reports half as many complaints allegedly involving brokers as complaints concerning carriers for similar types of problems, and most of these complaints did not involve licensed brokers.

But TBCA is nonetheless committed to upgrading standards or performance in its industry. The Commission recognized some of the TBCA programs discussd above. We would add to those observations that TBCA has gone far beyond any actions taken by the American Trucking Associations to assure financial responsibility of its members, and has challenged the ATA to do as much as the TBCA to clean its own house. In commenting to the American Trucking Association in January of this year concerning the report of the "Blue Ribbon Task Force on Economic Regulation", TBCA challenged ATA to set up a data bank on carriers who have failed to meet payment or other obligations, available to members of the general public, including brokers; cooperate in the creation of a credit reporting system for carriers and brokers, or encourage the expansion of existing credit reporting systems; join with TBCA in joint educational programs concerning how to select and use transport brokers; and join with TBCA in educational programs designed to encourage the rapid development of well understood and commercially acceptable modes of operation for newly deregulated freight forwarders.

TBCA wishes to be clear that it has great respect for many of the programs of the American Trucking Associations, a large association performing many valuable services for members. The Transportation Broker's Conference has invited the President of ATA to speak at its conferences on more than one occasion. TBCA would reach out to ATA to establish joint programs for mutual benefit.

TBCA here points out that if ATA finds any concern among some of its members relating to the practices of transport brokers, the constructive response is to work with TBCA in helping carriers and brokers to work effectively together. And if ATA or members thereof charge any failure of broker "self regulation", that association and its members can appropriately be invited to undertake as much self regulation as do transportation brokers.

### THE NATURE OF THE TEST CONFRONTING CONGRESS

Transportation brokers understand and appreciate an effort by Congress to keep abreast of trade developments. In pleadings before the Interstate Commerce Commission, brokers expressed no objection to that agency's undertaking an objective, fact oriented inquiry into the brokerage sector, and making a report thereon. Brokers began to thrive when they were allowed to see sunlight.

The transport brokerage sector does hope and trust that neither the Commission nor Congress will respond to complaints of a sort traditionally and generally handled by competitive market forces, the court system and the vast body of commercial law by reimposition of stifling regulatory restraint.

Modern transport brokerage began with the ICC's wise determination in 1979 that a very limited framework of regulations would suffice for an industry inherently competitive in nature, inherently subject to tight market disciplines, and subject to general commercial law. That framework of regulations is now embodied in 49 Code of Federal Regulations Section 1045. The rapid embrace of brokerage services in the liberalized transport markets of the 1980's powerfully attests to the wisdom of this approach. So affirmatively did the market respond to the liberalized "third party" service that traditional freight forwarder services were made obsolete, and Congress was moved to deregulate that form of transport intermediary service in 1986.

This "deregulation" was so successful because the Commission and Congress in effect did no more than allow an ancient form of market function, the brokerage function, to develop in the transport sector pursuant to well understood rules of commercial law developed over centuries of commercial practices and jurisprudence. Those who complain to you seemingly have yet to realize that they are asked to do no more and no less than the vast bulk of businesses in a competitive market economy—i.e. use ordinary business prudence and the courts, and take advantage of the vast array of productive contracting arrangements which are thus made available.

Regulatory overreaction to the emergence of the railroads left our rail system with a crippling array of restraint which had to be shorn in 1976 and 1980. Railroad reaction to the emergent competition of motor carriers led to an ill conceived motor carrier regulatory scheme which had to be substantially abridged in 1980. Regulatory restraints on transport brokerage stifled this economic function until lifted in the 1979–80 period, and if reimposed would stifle it again. We trust that Congress

has learned its lesson, and the discomfort of some motor carriers with open market disciplines and emergent competition of brokerage services will not lead to the closing of regulatory shutters on powerful, envigorating trade winds from the brokerage sector.

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STATEMENT OF LUND COMPANY, INC.

I am Allen Lund, President of Allen Lund Company, Inc. headquartered in La Canada, California. Our company was started as an exempt brokerage on March 1, 1976 and presently employs approximately 40 people with volume in excess of 1,500 loads per month. Allen Lund Company has offices in the locations listed below: Atlanta, GA, Leesburg, FL, Portland, OR, San Antonio, TX, Columbus, GA, San Francisco, CA, and Los Angeles, CA.

We are Dun & Bradstreet rated 1A1. The Produce Reporter gives us their highest 4X rating. The red Book Rates us 4 star, and we have received their Business Character Award.

Deregulation has enabled us to enhance our agricultural operations. We have gradually built up our regulated business. This allows us to better serve our agricultural customers, and particularly the smaller carrier, by enabling the carrier to obtain authority and procure hauls of products to the major growing areas at much better rates.

Before 1980, the small carriers were under the strangle-hold of the few truck lines who had authority to haul regulated freight. The small operator had to deal with exorbitant trip lease fees, outrageous paperwork demands, and lack of loads to agricultural producing areas. Before deregulation, it was common for truckers to deadhead in the summer to haul produce from California and other growing areas. This nonproductive practice for the truckers we load no longer happens. We, or the carrier, can now, through our new found ability to secure regulated freight, load to the producing areas, lowering the carrier's cost and the cost of moving our agriculture products.

Our company represents carriers ranging in size from one-man owner/operators to some of the largest carriers in the nation. One of the largest benefits of deregulation is the ability of the smaller carriers to get their own authority, enabling them to respond to the ever changing market.

I believe one of the never mentioned benefits of deregulation is, while rates may have fallen, we are returning a larger percentage of the revenue to the truck actually doing the hauling. Before deregulation, the smaller operators were at the mercy of the large carriers. Trip leases ran up to 50% of gross revenue. Slow pay and trip lease abuse was common, as carriers had limited competition. Now the carrier, working through a broker or direct with a shipper, has his destiny in his own hands. If he is mistreated, he can easily find other brokers or shippers to haul for.

Most of our carriers and shippers have worked with us for many years. We pay our carriers weekly, and the many years that these carriers have been with us indicate they are not unhappy at paying us our commission. We know the carriers pay our way and, in turn, we represent them well. Our carriers depend on our prompt pay practices, and our knowledge of the industry.

We serve as the carrier's sales force in the areas we serve. Most of all, we protect the carrier from unscrupulous shippers and receivers. It has been our experience that the shipping side of the freight business has many more problems than the broker or carrier sides. We use all means at our disposal to protect the carrier from shipper bankruptcy, shortages, pallett abuse, and unfair loading and unloading fees, as well as refusal to load and unload, reconsignments, and unfair deductions. I can say that most of our problems, and most of the money we lose, is because we have paid the trucker in full when he has been mistreated by the shipper. We have suffered many bankruptcies by shippers, but our carriers have always been paid in full with our company taking the loss.

On the other side of the coin, we serve as a buffer between the carrier and shipper. We serve the shipper as consultants and advisors. We protect him from cargo losses, and claims, as well as act as his claims agent. We try to screen every carrier sent to the shipper, and make sure the carrier is insured. We have always paid all claims to our shippers even though the carrier is at fault and does not have the ability to pay.

Shippers save time and money by working through a broker who knows what he is doing. We believe we have proven this time and again in the exempt business and we are proving this in the regulated business. We know what we are doing and our shippers and carriers agree. Although many of the functions we offer are not re-

quired by law, we have found through years of experience as exempt brokers, that we have a moral obligation to our carriers and shippers to provide these services, and the market will always demand this from us.

Since deregulation, we have noticed a considerable appreciation from many of our shippers regarding the increased level of service they are now receiving. We always had to respond quickly to our customers in the exempt business. Now, our regulated shippers are enjoying the same level of response. We believe that much of the freight will always be moved by large carriers directly dealing with large shippers. But we have proven the broker excels in the small movements, the unusual movement, and when shippers and carriers are out of balance. Brokers provide the occasional small shipper with rates competitive with the rates large shippers enjoy. Brokers enable the small carrier to negotiate with a shipper from a much stronger position. A good broker has much more general knowledge at his disposal than the traffic departments of many shippers and the carriers, because the broker deals with all facets of the business.

We also believe that by using normal business practices and the tools available now, a carrier and a shipper can weed out the poor broker, shipper, or carrier. We subscribe to Dun & Bradstreet, Red Book, and Blue Book ratings services, and are members of TBCA, Compunet, and many other trade associations. We do not do business with any shipper or carrier that cannot provide us with banking and performance references. We occasionally get hurt, usually by shipper credit losses, or by poor carrier performance. But by observing normal business practices, losses can be held to acceptable minimums.

By simply doing a minimum of homework, we can easily verify credit, and discover a reputation for unfair business practices. Many situations presented in criticism of brokers can be prevented by a carrier's simply checking out who he is dealing with. Doing business with competely unreliable brokers or shippers without investigating them can only lead to disaster. Shippers giving loads to brokers and carriers without proper background checks can once again only give opportunities to the unscrupulous.

I feel that the only regulation that could possibly be of service to the trucking industry would be a crackdown on pay and practices of shippers. Unless they pay and perform, the industry suffers. Possibly both shippers and brokers should be bonded.

(I repeat, our volume is 1,500 loads per month). The majority of our losses are suffered because we have paid a carrier when a shipper has not paid or has not lived up to his obligations.

After having many years dealing in an unregulated environment, we believe that the trucking business should be completely deregulated. Carriers will never get a free ride. As time passes and we further deregulate, we will all realize the value of good brokers. The only answer to the problems presented here today is conduct your business only with those who deserve it—and not to reregulate.

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STATEMENT OF JEREMY KAHN, CHAIRMAN, LEGISLATIVE COMMITTEE, TRANSPORTATION LAWYERS ASSOCIATION

Chairman Exon and Members of the Subcommittee, the Transportation Lawyers Association ("TLA") welcomes this opportunity to submit its testimony to the Subcommittee in its conduct of oversight activities concerning the activities of brokers of motor property transportation.

TLA is a specialized bar association with approximately 600 members throughout the United States, whose practice involves the representation of various transportation entities, particularly motor carriers of property and affiliated and non-affiliated entities, including property brokers, both those regulated by the Interstate Commerce Commission ("ICC") and those unregulated.

As an association of attorneys representing those in the industry, TLA is concerned that laws governing transportation are implemented and enforced as Congress has intended and has described in the National Transportation Policy. This assures a surface transportation industry in which all participants know the rules and can conduct their business accordingly, to their benefit and to the public's beneift.

TLA is submitting these comments as a part of its continuing participation in the Congressional Oversight process with respect to activities of the ICC. TLA members practice extensively before this agency, and, by virtue of this practice, it is believed that TLA is in an appropriate position to comment upon the activities of this agency in practice as well as in theory.

TLA believes that the result in practice of the modification of Interstate Commerce Commission regulation of property brokers, and more precisely the ICC's generally laissez-faire administration of the law following such modification, has been creation of a certain chaos within the portion of the surface transportation industry in which brokers participate, which is endemic and illustrative of similar chaotic conditions which exist elsewhere within the surface transportation industry in general. TLA believes this chaos is the result of the failure of the ICC to administer the law as Congress has written it.

Under Section 17 of the Motor Carrier Act of 1980, Congress removed the traditional "need" requirements as a prerequisite to obtaining a license to engage in business as a broker of motor property transportation, replacing them with a "fitness only" provision which requires, in practice, little more from a broker applicant than the ability to complete the ICC application form.

Where, prior to the Motor Carrier Act of 1980, there were but a handful of property brokers, their number has now proliferated dramatically. An ICC report entitled "Staff Report No. 11, Highlights of Activity in the Property Motor Carrier Industry," dated August, 1987, reflects a total of 896 grants of permanent authority to property brokers during the first half of fiscal year 1987. The transitory (and some might say illusory) nature of the property broker industry is reflected in the fact that 95% of broker licenses during that period were issued to new applicants; 99% of the licenses issued during fiscal year 1986 were issued to new applicants.

These figures, prepared by the ICC, reflect only the obvious. The property broker today must meet only the practical requirement of obtaining insurance in the amount of $10,000, ordinarily by a surety bond, and it then becomes licensed. Focusing upon the process and not upon the participants, it is apparent that in today's highly competitive and almost chaotic motor carrier industry, the property broker, with no need to demonstrate any commitment to being in business beyond a $10,000 surety bond, becomes a middleman with few responsibilities in the scheme of regulated transportation. In a business in which requests for transportation involve telephone requests by those located hundreds of miles apart, who are unknown one to another except by telephone contact, opportunities for abuse become dramatic.

TLA members as representatives of those engaged in the trucking business are concerned with the chaos which has developed in the industry by the proliferation of brokers who seemingly must satisfy no requirements of the ICC before they are able to engage in these activities.

Ordinarily, the larger trucking companies, by virtue of their market size and the sophistication and administrative abilities, can and do investigate the brokers with whom they do business and thereby avoid many of the effects of such chaos.

The trucking industry, however, is made up of primarily smaller, less sophisticated motor carriers, lacking either the sophistication or the economic ability to deal with the proliferation of property brokers and separate the many responsible brokers from the many irresponsible ones.

In the fast moving arena in which truckload transportation is sold, if an investigation of a property broker who is tendering a load has not already been completed, the carrier as a practical matter cannot take the time to investigate if it is to accept this load and stay in business.

Thus, there is a need for a greater overall level of stability and some requirement that the ICC consider the terms "fit, willing, and able" as they appear in the statute to constitute something more than a mere expression that every broker application is to be approved automatically.

Evidence of problems with property brokers is, to the TLA membership, anecdotal, but extensive nevertheless.

Case after case is described in which the property broker is paid by the shipper and refuses to pay the carrier, thereby creating not only an unjustified economic loss for the carrier but disrupting the shipper-carrier relationship upon which the free and efficient flow of commerce depends.

Yet another problem, is the $10,000 surety bond as it now exists. Again, looking to anecdotal experience, it seems that if a broker is to abscond with the proceeds from one shipment, (paid by the shipper and owed to the carrier, after the broker receives his commission) it will abscond with proceeds from many shipments. In one instance, carriers from at least seven states spread throughout the country are engaged in litigation in U.S. District Court seeking the equitable distribution of the $10,000 surety bond amount on claims totaling nearly $100,000. In this instance, it is significant to note that there are undoubtedly many additional claims, but the claimants did not pursue them prior to the time the Court determined to cut off opportunities to cut off opportunities for such claims.

The foregoing are anecdotes only, but on the basis of TLA members' experience, it is believed that these anecdotes illustrate a point.

The TLA concern is one which has been echoed in other oversight hearings. TLA is concerned that Congress direct the ICC to take steps to oversee specific areas in which transportation is particularly chaotic and to take such steps as are necessary to bring some order out of the current chaos through administration of laws as now written or as may be enacted in the future.

Perhaps most illustrative of the problem which TLA identifies is the recent action by one motor carrier which petitioned the ICC for some action by that agency to define permissible broker activities, in order to attempt to bring some order out of the chaos it was experiencing. The ICC's reaction was to merely dismiss the request, rather than to at least investigate a perceived problem and then make an informed decision, the role which the ICC is seemingly required to play under the letter and spirit of the Interstate Commerce Act.

TLA, as an organization, takes no stand on particular proposals, but it does urge this Committee to instruct the ICC to be receptive to complaints of industrywide, chaotic practices, at least to the extent that it will entertain proceedings, collect views of various interests within and without the industry, and render an informed decision which can provide needed guidelines and parameters for all.

Under the law, as viewed by TLA, and seemingly as enacted by Congress, it is the ICC's role to administer the National Transportation Policy. TLA believes that the chaotic conditions in the property broker area are the result of the Commission's failure to exercise this expertise; TLA believes that Congressional direction is required in this area.

The TLA thanks the Committee for the opportunity to present these comments.

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## Statement of NCB, Inc.

This testimony is offered in support of the Ad Hoc Committee to End Broker Abuse ("ACTEBA").

My name is Carolyn S. Hatfield. I am employed by NCB, Inc. of Lincoln, Nebraska, as a Collection Specialist. NCB, Inc. is a new business commencing operations in March of 1987. I have been assigned, at my request, to work primarily with midwest motor carriers in securing payment for the freight hauled.

Prior to employment with NCB, Inc., I had ten (10) years of experience as an Administrator and Supervisor of the Law Enforcement Division for a State regulatory and enforcement agency. As a Certified Law Enforcement Officer, I was shocked and indignant over the blatant abuses within the trucking industry.

It is an unfortunate truth that regulatory statutes, within themselves, do not serve to abolish illegal practices, nor do they offer a means to control such practices. The Interstate Commerce Commission has been reduced to an Administrative and Regulatory Commission without the manpower or the regional accessibility to successfully address the problems within the industry.

I am convinced that the Interstate Commerce Commission must become more responsible to the industry it regulates. The majority of the carriers whom we represent no longer report to nor forward complaints to the Interstate Commerce Commission, perhaps regarding such procedures as exercises in frustration.

We offer a listing of some of our clients: Andrews Freight Division, Norfolk, NE; Pro-Pacific, Inc., Norfolk, NE [6], F & P Corporation, Omaha, NE; American Transport, Inc., Omaha, NE; M & M Trucking, Omaha, NE; Beatrice Freight Lines, Lincoln, NE; Kear Trucking, York, NE; Cargo, Inc., Sioux City, IA; Cornpatch Express, Emmetsburg, IA; Mel Easton & Sons, Macedonia, IA; Rainbow Express, Council Bluffs, IA; Triangle Trucking, Salina, KS; Kansas Cartage, Kansas City, KS; K-W Trucking, Inc., Osborne, KS; and NTB Sunflower, Kansas City, KS.

NCB, Inc. is now in the process of entering data in a newly-installed computer program written specifically for freight collections. Because we are in a state of conversion and time is of the essence, we pulled one hundred forty (140) hard copies to glean some supporting statistical data:

Total accounts reviewed: 140; dollar amount: $294,151.53; shippers: 16; intermediaries: 124; brokers: 65; carriers: 18; others: 41.

Of the above accounts reviewed, eight (8) have filed for relief through bankruptcy. Another thirty five (35) have ceased operations without bankruptcy proceedings. We can document a small number of foreclosures, however, the majority apprear to have simply "walked away," leaving no traceable assets.

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[6] Pro-Pacific, Inc. has already been forced to cease operations.

We also document twenty four (24) cases of "mysterious disappearances." In every case of "mysterious disappearance, " the entity was operating as a broker, without Interstate Commerce Commission authority, without appropriate corporate registration, and without any tangible or traceable assets.

BROKERS

Of the sixty five (65) Brokers reviewed, forty six (46) had no valid Brokers' Bond at the time of shipment.

NCB, Inc. currently has seven (7) Bond Claims pending investigation by various surety and/or insurance companies. Of those pending claims, three (3) companies have refused payment in direct challenge to the Interstate Commerce Commission's decision in Ex Parte No. MC-183.

Eight (8) bond claims have been denied because the $10,000.00 bond had already been exhausted through previous claims.

I do not have the experience in the trucking industry to suggest a remedy for the problems that exist. I can simply question the acceleration of abuses that, to me, as a law enforcement officer, appear to be criminal activities. I have to believe that thoughtful legislation can assist an industry that provides vital services to the national community.

Time does not allow in-depth review of abuses but such documentation is available upon request.

ATTACHMENT

1. *Intermediary, Maine*—A carrier, brokering freight, denied responsibility for a freight bill. Payment by the shipper had been made to a business name only. The canceled check had been endorsed by an individual, operating under a d/b/a/ similar to the carrier's corporate name. Both the carrier and the individual held MC numbers. A review of the Articles of Incorporation tied the individual to the carrier. When advised of a pending inquiry to the Secretary of State, this account was paid through yet a third corporate entity.

2. *Broker, Indiana*—Requests for payment were returned "Box Closed." The telephone had been disconnected. The carrier requesting payment forwarded documentation including an "official-looking" form that had been completed by the carrier at the request of the broker. The broker provided an MC number, confirmed through the Interstate Commerce Commission. Investigation revealed no corporate registration, and no filing of an assumed business name. The street address given had never hosted a business of any kind. The Post Office Box given as a mailing address had recently been closed, but previously had accumulated mail for several weeks at a time. The assumed business name corresponded to only one resident of the city, a respected banking official who declared that he was "sick and tired" of receiving calls concerning freight collections. (This is just one of many "mysterious disappearances.")

3. *Broker/Carrier, Iowa*—A load was accepted by our carrier from a broker for whom they had previously hauled. The driver was dispatched, arrived at the shipping point, was loaded and ready to leave when he was requested to sign a Trip Lease with another carrier. The driver signed and delivered the load.

When seeking payment, the carrier could not be found. Requests for information were made of the broker, who denied any knowledge of the load.

Investigation revealed that the carrier and the broker operated out of the same business address and listed the same telephone number. A checck of the corporate records revealed that both corporate entities had the same corporate officers, the same incorporators, the same Resident Agent and the same signature on the year-end reports.

When the broker was contacted with this information, along with yet another request for information on the carrier, they only response was from the Resident Agent who accused the inquirer of abuse of process. Letters of inquiry have now been sent to the Interstate Commerce Commission on behalf of the client, with copies of the Resident Agent.

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STATEMENT OF DAVID B. BROWN, STAFF ATTORNEY, J. TERRY TURNER, EXECUTIVE DIRECTOR, INTERSTATE CARRIERS CONFERENCE

The Interstate Carriers Conference (hereinafter the Conference) is the national trade association for the irregular route common and contract truckload motor carrier industry in the United States. The Conference represents more than 600 truck-

load carriers nationwide, carriers that are domiciled in every state except Alaska and Hawaii. The membership serves all 48 contiguous states plus Alaska and all Canadian provinces.

The Conference commends the Senate Commerce Surface Transportation Subcommittee for holding these oversight hearings on alleged abuses of certain transportation brokers. At this time, the Conference neither proposes nor endorses specific legislation, but simply offers its cumulative experiences with transportation broker abuses for Congressional oversight purposes.

The Conference believes that abuses by certain transportation brokers are of the type and magnitude to warrant Congressional concern and further inquiry and study.

This Conference does not now nor has it ever sought immunization from the risks of business judgments as supporters of the status quo for broker regulation may suggest; this Conference readily endorses the proposition that deregulation of the transportation industry has created productive opportunities for carriers, shippers and brokers alike, and does not seek its reversal. Nonetheless, the Conference will not idly stand by while the Interstate Commerce Commission responds to this very concrete problem with nothing but free market platitudes.

The Interstate Carriers Conference supports the comments submitted by Vice chairman Lamboley to this subcommittee. Specifically, this Conference supports Mr. Lamboley's reiteration of his dissenting opinion in Senn Trucking Company—Lawful Practices of Property Brokers—Petition for Rulemaking, No. 39662 I, decided November 17, 1987, and No. 39662 II, decided May 20, 1987, and his clear support for an investigation into illegal broker related practices. Mr. Lamboley calls for the Commission to "assess the scope and figures of illegal broker abuses, and determine what if any remedial measures would be appropriate." The Conference believes that absent such a foundation, the Commission's comments on broker abuses lack credibility and are conclusory at best.

Seen Trucking Company is a carrier member of the Interstate Carriers Conference. The underlying complaint lodged by Senn in the aforementioned rulemaking petition was the all too common failure of brokers to remit fees to carriers for work performed. A Conference survey conducted in 1986 as well as the Interstate Commerce Commission's own FY 1987 records indicate that this is the most prevalent complaint of carriers.

Commission records provided to this subcommittee show that of 610 complaints on broker abuses received in FY 1987, 378 concerned broker failure to remit charges. How many of these complaints were resolved by the Interstate Commerce Commission? Official testimony of the Commission does not specify. However, a pretty good guess can be gleaned from the fact that according to the Commission's own testimony, 287 of its 292 enforcement cases against brokers involved failure to maintain surety bonds.

In 1986 this Conference surveyed its members on broker abuses. Many Conference members, especially the larger carriers, do not use brokers. The 51 carriers who do use brokers and responded to the survey, utilized 1,384 brokers and carried 28,750 truckloads of freight. While these members expressed a number of complaints including unexplained deductions, hidden charges, skimming freight charges, cancelled loads, and double bookings; first, and foremost was the failure of brokers to remit fees to carriers. This failure combined with a frequent practice of certain brokers to declare bankruptcy and reopen under a different name makes it difficult if not impossible for a carrier to recover the fees to which they are legally entitled. Small carriers, in particular, lack the financial resources to recover from today's costly court system. In many instances legal fees are simply too high to make it practical to sue for recovery when small dollar amounts are involved, whether the carrier is large or small.

The Conference recognizes that the high cost of litigation and related problems are familiar to members of the Senate Commerce Committee. Perhaps more germane than the product liability or broad-based tort reform proposals that this committee has struggled with during the past decade, was a bill favorably reported out of the Senate Government Affairs Committee on December 10, 1986, the Program Fraud Civil Penalties Act, S. 1134, whose purpose was to create a means of pursuing "nickle and dime" fraud cases by defense contractors that could not otherwise be cost-effectively pursued by the Justice Department. The Conference mentions this bill not to suggest the necessity for any such sweeping measure to address broker abuses, but only to reiterate the very real problem of pursuing cases involving small amounts of money in today's expensive court system, and to suggest that Congress is perfectly capable of crafting a fine-tuned solution to this problem without instituting the reregulation of the motor carrier transportation industry.

Among other changes, the $10,000 surety bond requirement should be increased. As made clear by the Senn petition, individual carriers that testified before this subcommittee on November 13, 1987, and the Ad Hoc Committee to End Broker Abuses, the $10,000 figure is ridiculously low and offers carriers no meaningful protection to speak of.

The Interstate Carriers Conference thanks the Senate Commerce Surface Transportation Subcommittee for the opportunity to submit these remarks, and offers its assistance should legislation in this area be contemplated at a later date.

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STATEMENT OF TED ROBINSON, PRESIDENT, BEST WAYS EXPRESS, INC.

My name is Ted Robinson and I am president and owner of Best Ways Express, Inc.—Best Ways Brokerage, Inc. and Best ways Forwarding, Inc. with headquarters in Spanaway, Washington. I am also the current president of the Transportation Brokers Conference of America (IBCA) which is a trade association of transportation brokers.

My transportation experience comes from 17 years with Consolidated Freightways in many areas, including 6 years in managing terminals; 7 years with Clipper Exxpress, Inc. a piggyback freight forwarder, and 6½ years with my own company. In addition to presiding over the TBCA I was a delegate to the White House Conference on Small Business, am a Governor appointee to the Small Business Improvement Council for Washington State and an appointee to the National Governors Association (NGA) on Trucking Uniformity. I also serve on several local service and trade associations and am president of an area Crime Stoppers Program.

Prior to the Motor Carrier Act of 1980 it would have been almost impossible to obtain any authority to allow me to remain in the transportation field other than employment with a handful of giant corporations. At the time I applied in 1981 I still had to overcome three protests from existing giants in the industry. Only because of the Motor Carrier Act of 1980 was I able to satisfy the ICC that my intentions of an estimated annual revenue of only 2 million dollars would not put these carriers in the 200 to 300 million out of business and cause them to close their doors.

Shortly after receiving my certificate for my carrier authority I field for and secured my broker license. I then complimented my common carrier authority with contract carrier provisions.

We have found our niche in the marketplace by serving smaller shippers in smaller areas that the large carriers abandoned sales personnel and concentration. Rather than leaving it up to the shipping public to find a reliable interested carrier in our new transportation environment, we seek out and team up with the mid and small size trucking companies. They depend on us to fill their needs because they cannot afford to train salesmen or agents throughout the U.S.

We service approximately 500 different shipper clients. In 1986 we paid over 1500 different carriers. We handle shipments from 5,000 lbs and up between all points in the continental United States and broker the same areas plus Alaska through our Tacoma—Seattle gateway.

In our early years as a carrier and a broker we brokered out 10% of our total combined revenue. Ninety percent of our business now is brokerage. The majority of traffic we handle is moved on flatbed and specialized equipment. We advance carriers (some large carriers too) 40% of the linehaul and remit payment in full upon receipt of proof of delivery. There are no waiting periods, and no restrictions.

Best Ways also has employees in Dallas and Houston, Texas that are also used for payment centers where delivery receipts may be exchanged for payment immediately.

Best Ways enters into a contract agreement with all carriers outlining each party's obligations and agreeing to arbitration should there be any misunderstanding. In our 6 years in business as a broker we have not received a single lawsuit or complaint to the TBCA ethics committee. We reserve 1% of our gross revenue for bad debt expense and to date have operated under that amount each year. Bad debts are part of doing business and should not be passed on to the carrier in any form.

I trust the committee will give consideration to the effect any regulation would have upon this small business industry. Please consider government statistics revealed at the White House Conference on Small Business that small business contributed 48% of all employment in the U.S. between 1985–86 and further they contributed to 60% of all net new jobs in our country. Small business created 42% of all sales and 38% of the GNP. To disturb and disrupt this segment of our employ-

ment base would be counter productive to our nation's commitment to basic freedom of our free enterprise system and democracy.

Government was formed to do for people what they cannot do for themselves. We have the system already in place for proper controls. Any further regulation would not serve the function of the government.

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STATEMENT OF DONNA R. MCCANN, PRESIDENT OF MCCANN'S TRANSPORTATION, INC.

My name is Donna R. McCann. I am President and Chief Executive Officer of McCann's Transportation, Inc., a licensed transportation property broker which is headquartered at 16075 Manchester Road, St. Louis, Missouri. My Company has been an I.C.C. Broker since 1983.

In addition to McCann's Transportation, Inc., I own McCann's Piggyback Consolidation, Inc. (Founded in March, 1980), which is one of the largest shipper's agent operations in St. Louis. My companies are entrepreneurial enterprises operating under the deregulated environment that came about as a result of the deregulation of piggyback, the Motor Carrier Act of 1980, and the Shipping Act of 1984. My broker operation is a member of the Transportation Broker's Conference of America and I personally am very active in that professional organization. This year I was elected a member of the Board of Directors of TBCA but over the past few years, I have served on their educational committee and have been a guest speaker at several of the educational sessions. TBCA has also given me the honor of being their Midwest Regional Vice President. In addition to the above, I am also Chairman of the Board of Shipper's Association International Limited, an international association that resulted from the Shipping Act of 1984.

My companies do not own nor do we operate a single piece of Transportation equipment. Our purpose is to satisfy the logistical needs of our customers. Those customers are both carriers and shippers. We function much like our counterparts in our industries, i.e., lumber brokers, sugar brokers, coffee brokers, stock brokers, travel agents, etc. We fill the needs of our customers, be that buying transportation or selling it.

The secret of our success is that we are both creative and innovative, doing new things or old things in a new way. We, like our fellow brokers, have grown to become a recognizable entity over the past few years. During that period, business conditions have had both positive and negative influences on our business and on brokerage in general. During our short existence, our companies have gone from $600,000.00 per year in revenue to $20,000,000.00 per year and have gained the respect of both shippers and carriers.

My companies have never gone to a carrier and forced them to run unsafe equipment or illegal hours or any such nonsence. If my business practices cause me to lose money, operate illegally or immorally, it would then be time that I looked elsewhere to make a living. No one, in my opinion, can be forced to run a business in this manner.

My companies have made mistakes but we have learned from those mistakes. We are better for those experiences—I wish they had not happened but wishing doesn't change that situation. An example of one of our more glaring mistakes was that of extending a very large carrier based out of Salt Lake City credit beyond our original agreement. Before we knew it, the carrier had run up excessive charges that could have put us out of business. When this was discovered, we refused to handle any more of their freight until their account was brought back into line. I wish I could quote you a happy ending, but I want you to know that that carrier did get us to within $25,000.00 of being current before they went bankrupt.

We believe that our judgment was poor but that our reaction, even though the timing was too late, it was good business judgment. Our only problem is that we let the account go too long and this practice has taught us an important lesson—if we don't take care of our business, no one will. When this carrier went bankrupt, we lost $25,000.00 but our underlying carriers did not lose a single dime because we paid each one of them. Our credit problems were not theirs—they were ours. Therefore, when I hear carriers say they are being forced to operate at a loss, or in an unsafe manner, or without payment, I fail to understand how such a practice can continue.

On the positive side, McCann's has been able to work with our customers (Shippers and Carriers) for our own benefit as well as theirs. As new carriers, and old carriers that lacked adequate sales forces, came to us to help fill their needs, we worked with them on a "Win-Win" basis—our relationshp had to be good for both of

us or it wasn't good for either of us. We have been able to fill a lot of empty backhaul miles for a good many carriers in our short time in business.

As for shippers, we have helped many small shippers by getting them prices, services, and/or discounts that the carriers usually only offer to the "Big Guys" in the market place. One such customer of ours is Gateway Foods, Inc., headquartered in St. Louis. Our cooperative efforts have helped Gateway Foods substantially reduce their transportation costs without affecting the quality of their service. This in turn has helped them increase their share in the market place.

We are not sure exactly why this hearing was called. Perhaps you are hearing from some truckers that there are problems in the brokerage sector.

If motor carriers complain to you because they have encountered news competition, our response is that they'd better learn to live with it. Brokers add value in the market place and our business society dictates that we be allowed the opportunity to compete.

If some carriers are confused about how to find and use reliable brokers, we invite them to participate in TBCA and otherwise learn from the sound business practices of other carriers and brokers. If some carriers have encountered some problems which TBCA is not addressing, and can feasibly and lawfully be addressed by a private association, we'll to glad to see whether we can add to the programs we have already put in place. We want the transportation broker market place to work well for all concerned, to the full extent humanly possible.

But if those who complain about brokers purport to be business people in the transportation market place and plead for someone in Washington to call credit sources for them, or manage their credit file, they are, we submit, out of touch with business reality. And we trust they would be out of touch with political reality as well.

In summation I fell that the Motor Carrier Act of 1980 opened the door for small business people (Shippers, Carriers and Brokers) to enter into an open competitive market with a fair opportunity to compete. In this regard, I believe the professional property broker can provide added benefits to both the shipping public and the carriers.

I sincerely appreciate the opportunity of appearing before you.

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STATEMENT OF RITA BONTZ, PRESIDENT, MARYLAND INDEPENDENT TRUCKERS AND DRIVERS ASSOCIATION

Thank you for the opportunity to present a statement for the record on the hearing concerning transportation property brokers. This statement is submitted by Rita Bontz, President of the Maryland Independent Truckers and Drivers Association, 1109 Plover Drive, Baltimore, MD 21227.

This Association has been in existence since 1974 and is devoted to improving safety on the highways and the economic conditions for independent truck owner-operators and small fleet owners. The Association currently has members in 24 States and the District of Columbia.

We believe that broker abuse is a widespread problem in the transportation industry. We can submit evidence that independent truckers and small fleet operators are being victimized by many of the transportation brokers who have come into being since 1980. If the Committee needs examples of the abuse, we will be pleased to furnish such information. In the meantime, we submit the following report from one of our members as just one example of the growing problem of broker abuse.

"My husband and I own and run a one-truck operation. We have our own ICC Contract Permit. We deal with brokers all the time. Unfortunately, too many of them are unethical and greedy. And why not, they know their chances of being investigated are slim. Who is there to keep them honest?

"We rarely get any kind of a settlement statement, just a check and that's it. We have no way of knowing how much the shipper paid, nor what the broker kept. We know for a fact (the shipper asked us how much we were paid) that one broker in Jessup, Maryland was paid $925 for one load we hauled; the broker had told us he "didn't get that much," said he would pay us $525. Where do you think the other $400 is going—in his pocket, of course. (We still have not received our $525, even though the load was delivered October 10, 1987.)

"We should be given a settlement statement for each load stating how much the broker received, his fee and our share as well as any deductions, amounts and reasons. Also, brokers should not make us wait for our money anywhere from 21 to 90 days as they do. If we phone them and threaten to turn them in to the ICC, they laugh.

"To go on, most brokers take 20 to 30 percent as their cut, including any and all drops. On trip leases they take the same percentages even though they have made us pay for all insurances, including cargo, decals, and so on, as well as paying for all highway and fuel use taxes! No wonder brokers are making money and some independent truckers are barely surviving. Ten or eleven percent is an ample broker's fee. We firmly believe that brokers should be strictly regulated. There are too many dishonest ones operating."

This is just one trucker's story. There are thousands more.

The members of this Association believe that the brokerage industry should be regulated in such a way as to discourage or prevent the type of unethical practices we have cited. The market place cannot solve this problem. Rather it seems that present conditions are actually helping to make the problem worse.

We ask the Congress to set forth rules which recognize the value of brokers, but which would inject some order into the present regulatory chaos. The situation as it now exists is driving many reliable truckers out of business. This country is facing a serious shortage of drivers and truck owner-operators. Steps need to be takem immediately to preserve this important part of our Nation's surface transportation system.

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CHATANI ENTERPRISES, INC.,
*New York, NY, November 5, 1987.*

Surface Transportation Sub-Committee of Senate Commerce Committee, Washington, DC.

DEAR MR. SENATOR: Chatani Enterprises, Inc. is a New York based sales company. We have been utilizing a licensed transportation broker, Transport Source, for the vast majority of our transportation needs, (both inbound and outbound), since 1983.

We herein represent to your committee that our relationship with Transport Source has had a positive and significant impact on our ability to service our clients with on time deliveries, and thereby increase our sales.

These distribution advantages were simply non existent before deregulation of the motor carrier industry and before the entry of the transportation broker into the marketplace.

The common carrier services we employed, prior to our discovering Transport Source, were unsensitive to our marketing needs. The common carriers inflexible distribution patterns restricted our growth and marketshare. This was poignantly evidenced with an analysis completed after only one year of employing Transport Source as our professional traffic management vendor.

That analysis revealed Chatani's sales increased over 100 percent, while our distribution costs rose only 1/2 percent. We attribute a substantial amount of both that and our continued sucess to the expert handling of our traffic by this transportation broker and its ability to get our product to market faster and with more reliability than our competitors.

Further, we as a company are able to reduce cost, overhead, and the risk of supporting an in-house traffic department by contracting with Transport Source for all our transport needs, such as logistical freight studies needed to open new markets, warehousing, electronic data interchange (EDI), delivery guarantees, etc. Their expertise is invaluable, when placed in that overhead context.

In our opinion, the transportation broker fills an information void in the national transportation system; to remove this service from the marketplace, whether by incongruous and unattainable insurance requirements, (which restrict market entry), or by re-regulation, would be ludicrous in light of the competitive environment surrounding business these days.

In closing, we suggest that if this committee feels compelled to remedy true abuses, it should look to judicial remedies already in place to alleviate real business abuses that exist in any industry.

Thank you for allowing us to be heard on this very important issue.

Yours Truly,

RONALD PARKER, *General Manager.*

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STATEMENT OF JAMES E. SMITH

My name is James E. Smith, and I own J&H Transportation Company, Box 231, RD-2, Gouverneur, New York, 13642. I am a member of the Maryland Independent Trucker & Drivers Association and am submitting this statement in an effort to get some legislative relief from the problems of brokers in the motor carrier industry.

I have been involved in transportation as a truck driver since 1947. As a result of the Motor Carrier Act of 1980, I was encouraged to obtain my own authority and to become an independent businessman. I obtained contract carrier authority in Docket No. MC-191474 and have made all the necessary federal and state filings to operate. Before deregulation, I was an owner-operator for authorized companies who made the insurance and regulatory filings for my truck, provided me with loads and paid me 80% of the revenue.

In obtaining my own authority, it was my hope that I would be able to obtain 100% of the revenue and build my own shipper clients. That has not happened, because, in many instances, intermediaries deny me access to shipper traffic. The area of northern New York where I live is sparsely populated and has a few large mills. Many of these mills, for whatever reason, have chosen to do business with property brokers. To enjoy their freight, I must enter contracts with those brokers. But, those brokers, who act like a traffic department for a shipper, do not have any responsibility for the transportation of the load, do not take possession of the goods or provide any identifiable service other than finding a carrier. Yet, the brokerage commission is 20%.

The result is that I am no better off than when I trip leased to other carriers, and, in fact, I am worse off, because I now have the full burden of the insurance and the state and federal regulation compliance.

Since I did not obtain common carrier authority, I need to have a written contract with whomever I provide service for. Attached hereto as Appendix A is a copy of the contract I use, which basically says that I will assume the responsibility for providing transportation service and that the shipper will pay me. In my experience, brokers will not sign a simple contract like this, but make small carriers, like me, sign their own "special contract." These contracts typically provide that the broker has no obligation to tell me the amount of its broker commission, that the broker is not liable to pay me unless he gets paid and that I have no written recourse to the shipper if I do not get paid.

Although the Interstate Commerce Commission has extensive rules in place which say what can be put into a lease agreement between a carrier and an owner-operator, there are no regulations to protect the rights of carriers when dealing with other intermediates.

Promises like "opportunity to compete," "access to the marketplace" and "eased entry" sound somewhat false to me now. Unless something can be done about broker abuse, I do not think small operators can expect to benefit by becoming carriers and providing transportation services in their own names.

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STATEMENT OF GEORGE A. GRILL, SHIP WESTERN EXPRESS, INC.

I state that my name is George A. Grill and that my business address is P.O. Box 970, Wilsonville, Oregon 97070. I am the Secretary/Treasurer and General Manager of Ship Western Express, Inc., which is an Oregon corporation engaged in business as a for-hire motor carrier under contract and common carrier operating authority issued by the Interstate Commerce Commission under Docket No. MC-181875. We are authorized to engage in nationwide operations in interstate commerce. We also hold operating authority issued by the Public Utility Commission of Oregon under Authority No. 18674.

Our general offices and principal place of business are located in Wilsonville, Oregon. Our operations are conducted over a relatively wide geographic scope and throughout the western and midwestern United States, and are conducted from our home office and principal place of business at Wilsonville.

I make this statement to relate the experiences we have had in the use of brokers in conducting our motor carrier business.

Ship Western Express, Inc. was organized and commenced business in March 1985. I recognized opportunities in the motor carrier transportation field which were created by the enactment of the Motor Carrier Act of 1980, for innovative trucking operations and transportation services. Initially, our operations were relatively local in nature and we were able to register a substantial success by watching our costs and expenses and operating under careful operating procedures. As our business prospered, we added equipment to our fleet and extended our operations to a wider geographic scope. In doing so we found a need to utilize licensed transportation brokers to generate backhaul traffic. If a motor carrier is to be competitive in the transportation marketplace, it must gain a maximum utilization of its equipment. The day is long past when a carrier can compete and survive with a one-way haul.

During the course of expanding our operations and engaging in broader operations, our fleet increased to approximately 70 tractors and 75 trailers. We were

able to generate traffic moving from the Pacific Northwest, and other western origins, but utilized brokers on a wide geographic basis to generate our backhaul. Our heavy use of brokers occurred during the latter part of 1986.

Unfortunately, the extensive use of brokers caused us to seek the protection of the Bankruptcy Court in Chapter 11 proceedings that were filed in June, 1987. Although we took every care in selecting brokers by checking their credit through Dunn & Bradstreet, making sure that they had an appropriate bond on file, the use of brokers to generate traffic caused us a serious problem in our cash flow and ultimately $225,000 and earned revenues were not paid over to us by transportation brokers. Which, as mentioned above, dealt us a serious financial blow and forced us to seek protection under Chapter 11 proceedings in the Oregon Bankruptcy Court.

Generally speaking, from our experience with brokers we have learned the following:

1. We call the broker for traffic and are dispatched to pick up a load from the shipper and in accordance with the dispatch, we are tendered the traffic by the shipper, provide the transportation, and make delivery at destination.

2. The shipper usually pays the broker the transportation charges in 10 or 15 days from the date of delivery.

3. The broker in turn does not pay the carrier for 30, 60 or 90 days, and some of the brokers disappear and do not pay the carrier at all.

4. Unpaid transportation charges through the broker add up rapidly and substantially. Our experience is that with a single broker transportation charges might add up to as much as $24,000 in a three or four week period, and when the brokers do not pay or discontinue business, the effect on the cash flow of our company was disastrous, and ultimately caused us to seek protection of the Bankruptcy Court in order to survive.

5. The effect on the carrier when the broker does not pay over transportation charges is particularly devastating for reason that the carrier is responsible for, and has to pay, all expenses of operation including drivers' wages, equipment maintenance and repair, fuel, tires, taxes and all other costs relating to the transportation business; whereas, the broker has no expense other than probably rent for a small office and a telephone bill. The inequity is that the broker with little cash outlay uses the cash while the carrier with all the expense does not receive payment until the broker is able or ready, if payment is made at all.

6. Upon seeking protection of the Bankruptcy Court and limiting our use of property brokers, our volume fell off approximately 50% and our fleet of equipment was reduced accordingly. By eliminating the use of brokers so far as possible, we expect to remedy our financial problems and come out of the Chapter 11 bankruptcy proceedings as a healthy carrier.

Because of the foregoing, and in order to survive we have had to claim transportation charges from the shipper under the bill of lading contract even though the shipper had already paid the broker and had to pay twice. In those instances where a claim was made against the broker's bond, we found that because transportation charges would accrue so rapidly when a broker could not meet its obligations, collection on the bond took too long a time and the prorated share of recovery was usually an insiginficant amount.

I am convinced that the services of a reliable licensed property broker are beneficial to motor carrier operations. However, the carriers need be protected from those brokers that are not reliable and do not meet their responsibilities in promptly paying over transportation charges to the carrier after transportation has been performed. No matter how careful we were in our endeavor to find responsible brokers, we nevertheless were forced to seek the protection of the Bankruptcy Court in order to survive.

One suggestion I make is that a shipper utilizing a broker be required to pay transportation charges directly to the carrier and the brokerage charges directly to the broker. In that manner, the carrier, with all the expenses of transportation, would receive its transportation charges without being at the mercy of the unscrupulous or unresponsible broker.

I also believe that in view of the substantial transportation charges handled by a broker that the broker's bond should be increased to a realistic amount.

Although, in the overall transportation scheme of things, our company could beneficially utilize the services of a broker in generating traffic. We only utilize the services of a broker as a last resort, as we cannot again afford to place our company in jeopardy because of our use of an unresponsible broker.

WASHINGTON, DC, *November 20, 1987.*

Senator J. JAMES EXON,
*Subcommittee Chairman, Washington, DC.*

DEAR SENATOR EXON: Pursuant to your instructions, enclosed are the original and three copies of additional testimony that we received this week, for the above referenced hearing.

If you require any additional information, please do not hesitate to contact me

Sincerely,

HENRY E. SEATON, *Esquire.*

Enclosure: [7]

[7] The following statements were retained in the Committee files: Mehmet Bilgutay, Atlantis Express Inc.—Carrier—Minnesota; Kathleen Mack, Best Products Co., Inc.—Shipper—Virginia; Jackson Salasky, Cargo-Master, Inc.—Carrier—Texas; Verle Deetz, D&D Transport, Inc.—Carrier—Wisconsin; Tom Green, Farmers Elevator of Kensington, Minnesota, Inc.—Carrier—Minnesota; J.L. Hatfield, Hatfield Enterprizes, Inc.—Carrier—Washington; Billy L. Wilkinson, K-Lines, Inc.—Carrier—Arkansas; Ray Couture, Kervan Truck Lines, Inc.—Carrier—Minnesota; Michael McLard, Manning Motor Express, Inc.—Carrier—Kentucky; Boyd Whetzel, North & South Lines, Inc.—Carrier—Virginia; Norm Losey, Oneida-Columbus Express, Inc.—Carrier—Tennessee; James Kelly, Republic Express, Inc.—Carrier—Minnesota; Eugene S. Schultz, Schultz Transit, Inc.—Carrier—Minnesota; Roger D. Herman, South West Leasing, Inc.—Carrier—Minnesota; Ginger Scruggs, Southwest Motor Freight—Carrier—Tennessee; Frank Sannebeck, System Terminal, Inc.—Shipper Agent—California; Catherine Cooper, Trax, Inc.—Carrier—Montana; Michael S. Ratkiewicz, Direct Transit, Inc.—Carrier—Iowa; Dave Van Wyk, Van Wyk, Inc.—Carrier—Iowa; and Francis Cisewski, Kujak Transport, Inc.—Carrier—Minnesota.

BEFORE THE
SURFACE TRANSPORTATION SUBCOMMITTEE
OF THE UNITED STATES SENATE COMMERCE COMMITTEE

STATE OF TENNESSEE )
COUNTY OF PUTNAM )

AFFIDAVIT

Comes now, DON HULSEY, who first being duly sworn, states as follows:

1. My name is Don Hulsey, I am presently Operations Manager for Smithville Freight Lines of Smithville, Tennessee.

2. I have been in the transportation industry for over twenty-five (25) years in various capacities from dispatcher to general manager. My experience includes over ten (10) years with Ryder Systems, Inc. of Miami, Florida. Also, I was general manager for Mercury Transportation of Houston, Texas. Based upon my experience in the industry, I am familiar with the industry both presently and for the last twenty-five (25) years.

3. I am concerned about the proposals to completely absolve brokers of regulation. I have been in the transportation industry for twenty-five (25) years and have seen the effects, both good and bad, of regulation in the transportation industry. I have seen abuses by brokers firsthand.

4. In November of 1986, I was employed in operations for a small business domiciled in [redacted], Tennessee. I stayed until the end of June, 1987. This company, although it was an ICC certificated company, brokered loads to various carriers. At no time did the accounts receivable go above approximately Six Thousand Dollars ($6,000.00). However, the company did not remit the money to the carriers which actually performed the transportation services. The company went out of business in 1987 owing over Eight Hundred Thousand Dollars ($800,000.00) to approximately two hundred (200) motor carriers.

5. The company maintained a list of motor carriers which we were not to use. Upon inquiring of the principal owners of the company why we could not use these motor carriers, I was informed that the company owed each of these motor carriers substantial amounts and did not intend to pay them. If we brokered any freight to these motor carriers the principals were afraid the motor carriers would hold the freight and demand payment.

6. At the time I quit that company I was owed three (3) weeks salary and I know that another lady working handling accounts receivable was also owed three (3) weeks salary.

7. Not only was this abuse conducted in Tennessee, but I later found out that the principals of that company also had conducted the same type of operation in Phoenix, Arizona. The company in Phoenix also went out of business under the same type circumstances.

8. It is this first hand observation of abuse in the broker business that compels me to make this statement in hopes that in a small way I may help to prevent these abuses in the future by encouraging continued regulation of transportation brokerages. Even if entry and exit is not regulated, all of the other regulations should be maintained and strengthened to assure some measure of responsibility and accountablility.

DATED this the 9th day of November, 1987.

Don Hulsey

DON HULSEY

BEFORE THE SENATE COMMERCE COMMITTEE

TESTIMONY OF JOE TATE

My name is Joe Tate, I live at Rt 3, Box 248, Springfield, Tennessee 37172. I was employed by the Interstate Commerce Commission for 28 1/2 years, until I retired on August 2, 1986. For the most of the last part of my years of service, I was a district supervisor for the I.C.C.

Before I retired, I received numerous informal complaints from carriers who asked me if the I.C.C. somehow could help them collect from brokers and other intermediaries, who collected from shippers and then either could not or would not pay them. I was forced to tell these carriers that the I.C.C. had no authority or policy mechanism to help them.

I believe that the bad debt crisis is a serious problem facing the motor carrier industry. The problem of intermediaries who get involved in the payment loop only to disappear with the shipper's money is an all to frequent occurrence. It is a problem which to my knowledge, the I.C.C. has not addressed and which undermines the corporate structures of carriers charged with the duty of providing safe and adequate transportaiton.

Joe J. Tate 11-5-87

Joe Tate

AM-CAN DISTRIBUTION SERVICES, INC.

November 6. 1987

SENATOR EXON
U.S. SENATE
WASHINGTON, DC 20510

Dear Senator Exon:

In reference to your hearing on Broker Abuses on November 13th, I would like to express our experiences. We are a private carrier with common carrier and contract carrier authority for all 48 states. We are a Nebraska based fleet of 45 tractor-reefer trailers and haul mostly frozen food items.

Because of our delivery zones, we are forced at times to use brokers for backhauls. Up until 18 months ago, we used many brokers, but because of some uncollectible freight bills, now we are forced to lay over our drivers until we have received credit checks, references, etc. on the broker who has a load for us.

One broker that we used, I called many times (20 or more) to pay our freight bill of $910 and he continually put us off. In the last few callings, he would say "I am sorry, but you have to talk to Butch, next time he would say "you have to take to Berrie" which was the same person and of course was always out of the office.....

Another situation that happened within our state, one gentlemen which called us many times...has worked or owned 4 or 5 different brokerages, changing the name and leaving many unpaid freight bills each time...He got us for $450.00 and has left our state as far as I know.

Another broker, has closed his doors, no where to be found, leaving us with a bill of $1140 unpaid. We have tried to collect this from the shipper who says he paid the broker and will not pay us for our services. We delivered his product and he completed his sale but we pay the penalty.

Several times I have tried to collect from the broker's bond, but have never been successful. It has either been used up, cancelled, or never had one. I believe the bonds must be increased and held open months after the brokers closed his door.

We need your help...we must have authority to operate..pay taxes..follow federal regulations...pay extremely high insurance fees, but our services go unpaid.

Our losses have been under $5000, but we have run many empty miles just to get a load from a sound credit approved broker.

This is a nationwide problem and must be stopped or the freight rates must go up to cover the costs of these loses. Even that will not be an answer. Shipper should pay freight companies for delivers if the brokers will not.

We need your support to stop this abuse.

Sincerely,

Esther Osborne

Esther Osborne
Fleet Administration Supervisor

FACTORY AND STEEL
TRANSPORTATION, INC.

ROUTE 1 BOX 74A - WAVERLY, TENNESSEE 37185 PHONE 615/296-4275

NOVEMBER 3, 1987

The Honorable Senator Exon
Chairman of the Senate Subcommittee

My name is Andrew B. Dodson, I am President of FACTORY & STEEL TRANSPORTATION, INC., a common carrier operating 103 trucks from Rt 1, Box 74A, Waverly, TN 37185.

It may be redundant to say but the fact remains that the trucking industry is a capitol intensive, labor intensive, highly competetive business. In the past one redeeming quality was that your charges were assured some priority by your customer because of ICC policies on payment. Now, not only are customers complacent about paying but the recent surge in the market place of unscrupulous freight brokers has made a bad situation worse.

To serve a "good" local account, FANS has to take freight to areas of the country where we do not have established back hauls. A small transportation company such as FANS depends on brokers to fill a void caused by our lack of sales ability in these areas of the country. THEN OUR PROBLEMS BEGIN. By the time we "check out" an unfamiliar broker, the load has already been dispatched or we simply don't have time to do a thorough check and settle for a load "we're sure of" for below operating cost.

In the past we've had to completely write off over $15,000. In other cases, it takes 6 months to get paid. Also, it seems that "individuals" control the freight and these individuals can start up and go out of business as many times as they like and the shippers follow them like puppies. I can't prove any impropriety between the shipper and these unscrupulous brokers, but I suspect it.

The requirements of a bond for a broker is a laugh. Trying to collect from an insurance company is a nightmare, plus the bonds are usually inadequate and there's not enough money to go around.

I would like to see legislation that would require shippers to step in and make good on brokers who default. This would cause shippers to be more selective in who they hire to broker their freight. Also, I think the bond requirements should be at least 75% of one month's gross operation for a broker with a $100,000 minimum.

There are those who would ask why truckers should deserve special collection help. The reason is that the competent flow of Interstate Commerce and the viability of small transportation companies deserve and demand the help.

The requirements on truckers to provide adequate insurance, safe road worthy equipment, and good drivers is good business. But consider that old Washington Biblical phrase "THE LEGISLATURE GIVETH AND THE LEGISLATURE TAKETH AWAY". Therefore, if truckers in interstate commerce are put under the looking glass, put the brokers there too and to the same extent. If you decide to let brokers and shippers become legal extortioners, then grant the truckers the same freedom and let the principle of caveat emptor apply.

Respectfully,

FACTORY & STEEL TRANSPORTATION, INC.

Andrew B. Dodson
President

IMX

I.C.C. - MC. 172833

# Inter Modal Xpress, Inc.

October 30,1987

ACTEBA
P.O.Box 931
Washington,D.C.20044

Attention:Mr.Robert D.Antholz
President

Dear Bob:

My name is James Kelly, and I am the owner and president of Inter Modal Xpress Inc.. IMX is located(home based) at 876 Bailey Avenue, Buffalo,New York. We are a specialized import/ export steamship container hauler serving the geographic area of Western and Central New York State.

We are a little over 4 years old and grossed over $4 million dollars in 1986. Employment is over 100 people with terminal/offices in Newark, New Jersey; Rochester,Syracuse and Corning,New York as well as Jacksonville,Florida.

IMX is a new upstart company and relies on maintaining a good/clean cash flow. We do have a general line of credit established with our bank which has to be activated when receivables extend beyond a 45-60 day period.

Our regular(over 400)customers are generally good payers. They are also well established businesses that have no intention of becoming dead beats.

The experiences we have encountered with freight property brokers as certificated by the ICC would require a volume publication.Specifically,' most of them have very little good business ethics and have less integrity as far as meeting their legal and moral obligations to the carriers(truckers) they contract with on behalf of their shipper-customer.

It is these multitudes of brokers who have created the past and existing stigma associated with doing business with a property broker.

They become greedy with accepting payment from the bonefide customer but do not pass on the amount of renumeration agreed to with the carrier chosen.

These brokers will intentionally and knowingly make arrangements with common carriers such as ourselves with no more intention of payment than the man in the moon.

IMX no longer does business with freight brokers.

We have tens of thousands of uncollectable receivables that we consider cost of doing business with bandits.

I believe that the government sould take steps to protect companies such as ourselves from being taken advantage of in such an open and flagrant manner.

The Commission should be more selective when issuing authority to them and that legislation should be enacted to make the customer responsible in meeting the payment to the company performing the actual physical movement of their product.

The cost of insurance and other expenses in offering a excellent consistant hauling service should be burdened by the shipper for the shortcomings of the middleman-broker he selects to act on their behalf with regards to moving their product to market.

The trucking industry needs federal rules and regulations to insure payment of our bills.

Sincerely,

James Kelly
President

P. O. Box 111
Choudrant, La. 71227
November 5, 1987

TO WHOM IT MAY CONCERN:

We are a 48 state General Commodities, Contract Carrier, running 6 trucks.

Why can't we afford bad debts? That is a stupid question. Nobody can afford bad debts. When you are working on a 10% margin, if someone fails to pay you, you have to haul 10 additional loads just to get back to break even.

There have been many incidences of non-payment. In the past 12 months, I have had 2 brokers just disappear, one that we found had no authority or surety bond, 3 that brokered the loads to us, then required that we sign trip lease papers after the load was hauled, before they would pay us, which is illegal, and we still have not been paid. We have contacted the ICC on these, but all we ever get is a very disinterested person who sends us a form to fill out. Big deal!!!. We did get 2 responses from the ICC where the people seemed genuinely concerned, but as they said, there is little they can do. One case was a minority owned company in Georgia, but the ICC said there was no hope of getting our money because every time they contact them about non-payment to carriers, and there were a lot more carriers than just me, the company starts screaming discrimination. The other case is a broker in Texas operating illegally. No bond. No authority. They are going to shut him down. That's good, but it still does not get me my money.

Right now I have $10,000.00 that will never be collected from last year, plus about $10,000.00 that is around 6 months behind. Trying to collect is very difficult. They just disconnect the phone and that is the last you ever hear from them.

The TBCA claims they are regulating their industry. Horse apples. I have looked at their directory of brokers and found several that I know are not good. Besides, their directory only lists brokers that have joined the TBCA. Just because they are on the list doesn't make them good, but if you are willing to pay dues, you can get information. In other words, if I will pay them, they will tell me. Is this self regulation, or is this a paid information business?

David Ambrose
AMBROSE TRUCKING
P. O. Box 111
Choudrant, La. 71227

# J & K Transport

November 6, 1987

Transportation Revenue Managements, Inc.
Suite 525 McLachlen Bank Building
11th & G Street, N.W.
Washington, D.C. 20001

Senate Commerce Committee
Washington, D.C.

Gentlemen:

As a licensed and bonded Transportation Broker, we would like to address the problem of illegal Broker Abuses throughout the United States.

We feel it is a vital point to differentiate between the so-called "Agent" or "Broker" who is operating without authority or bond, and the Transportation Broker who is in compliance with ICC regulations in obtaining the ICC Licensed Authority and Bonding required.

As with all existing laws, some are not enforced with the strength required to protect the innocent, or victim, as the case may be. That seems to be the case presently when an illegal broker or agent can operate freely under assumed names in various locations indefinitely without any authority whatsoever, and the penalty apparently is not sufficiently harsh to discourage his movement.

There seems to be much more regulation for the licensed broker merely because his business is on file and registered with every required agency; whereas the illegal agent is rarely on file with any governing agency.

We would, therefore, suggest the following controls be considered:

1. Enforcement of the licensing and bonding requirements for ICC Brokers, with harsh penalties for non-compliance, and

2. Enforcement of penalties on shippers using illegal brokers or agents, whereby the carrier/broker can turn to the shipper for payment of services rendered if the shipper's agent/broker refuses to pay.

Credit information is readily available on businesses registered with governing agencies. Once a shipper, carrier and/or broker has the proper information on licensing and bonding, that information can be verified with a phone call, and the decision made whether to extend or refuse credit.

We feel this would put the responsibility on the shipper to know who they are doing business with in the beginning.

Most of our customers require a copy of our ICC Authority and Bond. We also supply copies of our carrier's insurance upon request. If all shippers will require this type of information, they can then proceed with credit verification and eliminate many of the bad debt problems currently encountered.

We trust these views will be helpful in your decision-making.

Sincerely,

J & K TRANSPORT, INC.

Virgil J. Lee, President

AFFIDAVIT BEFORE THE SENATE SUB-COMMITTEE
HEARING ON BROKER ABUSES
NOVEMBER 13, 1987

Comes now that Arthur C. Litton, II, Vice President, Secretary and General Counsel of The OK Trucking Company, 3000 E. Crescentville Road, Cincinnati, Ohio 45241 deposes and says as follows:

Our Company is a general commodities regular route motor common carrier and in 1986 our gross revenues were approximately $32 million dollars.

In August of 1986 we transported the freight of a large department store and incurred charges in the amount of $5,078.20. The freight was picked up on a prepaid basis at the facilities of a freight broker in the Cleveland, Ohio area. The bills of lading which were tendered to us on pickup were pre-printed with the name of the department store in the heading. Initially, we inadvertently billed the freight bills and sent them to the freight broker. We later sent the bills to an auditing company in St. Louis, Missouri, as indicated on the bill of lading, whereupon the auditing company advised us to bill the charges to a third-party broker in Lindhurst, New Jersey. The original freight broker had become insolvent.

We sent copies of corrected bills to the traffic manager of the department store and they were returned to us by letter from the third-party freight broker. I reviewed the facts as to how the bills developed with an officer of the third-party freight broker and received a letter from his attorney advising that the department store was not obligated to pay transportation charges a second time and that the third-party freight broker felt by continuing to involve the department store in the matter was a tortious interference in their advantageous business relationship. Also, I was advised there was no privity of contract between the third-party freight broker who had dealt through the original freight broker we were tendered the freight from as, there was no privity of contract and it was felt we were estopped from collecting charges from the department store.

The freight broker originally held themselves out to be agents for the department store and there was no mention at the time of our dealing about a third-party freight broker and the first we knew of them was when the auditing firm told us to send our freight bills to them.

After considerable time and effort we turned the freight bills over to a law office to institute legal proceedings; the lawyer informed both the department store and the third-party freight broker that it was his understanding that the third-party freight broker was a licensed broker operating pursuant to [redacted] with the surety bond in place. The department store as the "shipper" was a named beneficiary of that bond, thus affording the department store shipper a remedy against double payment. But for threatened action by legal counsel, the third-party freight broker would have continued to assert payment to the unlicensed intermediary broker thereby continuing to deny liability by saying the department store's obligations were discharged pursuant to the bills of lading.

After several letters and phone calls in the way of collection effort, we were finally able to settle the case for 75% of the amount owed and while not 100% satisfied, we felt it would cost far more to go to court to prove our case than to reduce our losses and proceed with our normal course of business.

In further examining the problems and pitfalls of dealing with illegal or under-capitalized middle-men/freight brokers, I understand our experience was one of the more favorable ones. Thus, we have instituted strict procedures for checking any freight brokers with whom we are dealing and feel that further federal rules and regulations to insure that freight companies lawful bills are paid are in order.

Thank you for the opportunity of being heard; we respectfully request that further action be taken to stop broker abuse in the transportation market place.

Arthur C. Litton, II

Arthur C. Litton, II

November 04, 1987

To Senator Exon

RE: November 13, 1987 Senate Subcommittee hearings on Broker Abuses.

I, Dennis Britt, Executive Vice President for Service Transport, Inc. submit the following affidavit requesting Government action regarding the operational practices of property brokers and that a thorough examination of the regulation of these brokers be made. Action is being requested in order that common carriers such as this company may readily obtain monies due them from such brokers, without the necessity of legal action or the risk of total loss.

SERVICE TRANSPORT, INC.
GENERAL OFFICE
P.O. Box 2749
Cookeville, TN 38501
(615)528-1558
Interstate Wats-800-528-1616
Intrastate Wats-800-821-3653

CORPORATE OFFICE
201 Terminal Court
Nashville, TN 37210
(615)244-0980
Interstate Wats-800-821-2301
Intrastate Wats-800-621-0587

Service Transport, Inc. was founded in March, 1979 and is a Medium Carrier in the Transportation Industry. We maintain a steady growth and a daily strive to fulfill a commitment to our customers by providing quality service. In order to do this we are constantly adding equipment and increasing our number of employees, along with opening additional terminals to meet the service demands. Therefore, we cannot afford to encounter any type of bad debts, particularly those of such magnitude normally incurred when brokers are responsible for payment.

From January 1985 through December 1986, this company alone experienced losses of over $ 26,000.00 in receipts due from Brokers and their affiliates. After pursuing all reasonable avenues of collection and still not having been paid, we took, in many cases, what we understood was a legal and effective recourse. That being by filing claims against the delinquent brokers' surety bonds.

In many incidents when filing a claim against the bond we found that we did not have proper back up to do this. Underwriters claimed they needed specific pages of the bond itself. They stated that they were the writer of the Primary Liability only for the broker. Several times we were informed that contact had been made with the principal requesting that they state their position to us, which they did not. One insurance company stated that the bond referred to covered runs to Travelers and shippers and not to carriers. We were promised investigations by bond holders, which we never received any results from. In many incidents the bond was canceled only a few days prior to our loss date. These are only a few of the many problems we have had in trying to collect on the bond.

There was one case where an individual gave information and brokered a load to our company under his own name and address while working for a broker company himself. Needless to say, when we attempted to collect on this move, he was no longer employed by that company.

This industry needs federal rules and regulations to insure that our bills are paid. Government action is needed.

Respectfully submitted,

Dennis Britt

Mr. Dennis Britt
Executive Vice President
Service Transport, Inc.

**AFFIDAVIT**

Stephen S. Holmes, being duly sworn, deposes and says as follows:

1. He is employed by Vanguard Transportation Systems, Inc. (Vanguard), as General Counsel and has been so since September 1, 1987. For the five years preceeding his employment, affiant was in private law practice and represented Vanguard and other motor carriers located or doing business in the Cincinnati area.

2. Vanguard is a truck load carrier with annual revenues of approximately $4,000,000. Vanguard operates primarily between the cities of Cincinnati, Cleveland, Detroit, Chicago, St. Louis and Atlanta.

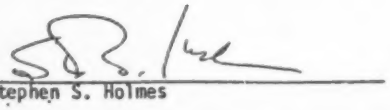
3. During his representation of Vanguard and other motor carriers, affiant has been involved in several collection matters in which brokers were involved. A sampling of the collection problems affiant incurred with these brokers is as follows:

a) In private practice and as General Counsel for Vanguard, affiant has been involved in several claims where the broker is simply woefully undercapitalized and goes out of business because he does not have the cash flow to support the business he handles. Furthermore, since these individuals do business as corporations, the carriers are left holding the bag and the broker will often open a new business under a new name and start the same cycle over again. This problem arises from inadequate capital and/or bond requirements. Vanguard has lost $1,500 - $2,000 in receivables through this problem.

b) While representing a truck load carrier in Cincinnati with revenues of approximately $10,000,000.00 affiant attempted collection of approximately $10,000 in freight bills from a broker. Upon contacting the broker, affiant was advised the broker had closed its operation and was bankrupt. Affiant then obtained the name of the insurance carrier providing the broker's bond. Upon contacting the insurance carrier, affiant was advised that there were very few claims against the bond and that the carrier would receive a pro rata settlement of approximately 50-60% of its claim. Several months passed and nothing occurred. Affiant was finally advised that the insurance carrier interpleaded the bond money into court and would let the court determine what amount would be paid to claimant. As of September 1, 1987, affiant had received no payments. Affiant attributes this loss to the fact that bond level requirements are far too low considering the large dollar volumes which broker's routinely handle.

c) As General Counsel for Vanguard, affiant is currently handling three collection matters totalling approximately $2,000.00 which involve brokers. In each case the broker has gone out of business and Vanguard is attempting collection from the shipper. In each case the shipper has argued that it paid the broker and that it did not deal with the broker as a broker, but rather as a carrier. The shippers claim that they made payment to the broker as a carrier and have no knowledge that Vanguard was actually the carrier. Vanguard was actually the carrier that moved the freight. Affiant has countered these arguments by establishing that the bill of lading shows Vanguard as the carrier. These shippers still refuse to make payment primarily because they were unaware that they were dealing with a broker. It appears as though affiant will have to obtain out of state counsel to collect these accounts.

4. Based on the above experiences and affiant's overall experience in the trucking industry, affiant is of the position that much stricter bond, capital and reporting requirements must be placed upon brokers to prevent these injustices. Brokers are in fact trustees for carriers' money. Without sticter bond and capital requirements, brokers will continue to breach this trust arrangement and carriers will continue to be left with no recourse.



Stephen S. Holmes

*Wiest Truckline, Inc.*
RURAL ROUTE #2 - EXIT 57, I-94 WEST
JAMESTOWN, NORTH DAKOTA 58401
PHONE (701) - 252-6451

11-4-87

Henry Seaton
McLachlen Bank Bldg.
Rm 525
666 11th St. N.W.
Washington, D.C. 20001

Dear Mr. Seaton,

My name is J.P. Wiest, I am president and general manager of Wiest Truckline, Inc. I have been in business since 1966, serving the shipping needs of small and large manufacturing companies in the upper midwest.

Our company has a gross revenue of about 3 million dollars per year with a total of 52 employees. During the past seven years we have experienced a tighter margin of profit to work with, due to deregualtion of the trucking industry. The problem creating the bulk of our tight fiscal situation is the freight brokers who contract with a shipper to transport freight, then the broker collects the freight and refuses to pay the trucking companies for services rendered.

The following amounts shown come directly from our books of loads in which we agreed to haul for the broker and were unable to collect.

| | | | |
|---|---|---|---|
| 1987 | 23 loads | - | $23,266.40 |
| 1986 | 17 loads | - | 17,986.87 |
| 1985 | 19 loads | - | 19,499.39 |

The shippers were contacted on these loads and the shipper contends, it is not their responsibility as the shipper paid the broker for all freight charges agreed upon.

Attached to this letter, are two examples of problems we have faced with brokers. I am also sending you randam samples of some of the broker contracts which the carrier must sign before the broker will pay the freight charges due the carrier. As you can see the broker is held harmless from any insurance costs, and the carrier or trucking company must agree to retrain from soliciting any of the business from the shipper involved.

My feelings are: the shipper should be responsibile for the payment of freight charges to the trucking company and if the shipper chooses to do business with a broker, then the shipper should be responsible for ascertaining that the broker is in fact bonded and by whom. The money that is paid to the broker should be kept in trust until the trucking company is paid. Every bill of lading that the shipper loads, should have attached to it a copy of the broker bonding. If the broker refuses to pay the trucking company, the shipper should be liable to pay the trucking company even if it constitutes paying the freight bill a second time.

There needs to be some federal control for these brokers in which randam auditing would take place concerning payment and bonding of these loads.

If you would like to see out books as to how much money we have been cheated out of during the past years, please call and set up an appointment with our bookkeeping staff. We Want to help in anyway possible.

Sincerely,

J.P. Wiest, pres.

STATEMENT OF ROGER HARRISON
President of R. L. Harrison Trucking Company
Benton, Arkansas

Mr. Chairman, members of the Committee, my name is Roger Harrison, and I am president of R. L. Harrison Trucking Company, which is located in Benton, Arkansas. I appreciate the opportunity to submit this statement to you regarding some of the problems that brokers are causing for carriers in the trucking industry.

R. L. Harrison Trucking Company is an irregular route common carrier company. R. L. Harrison Trucking has been granted authority to carry freight in 48 states. The Company has been in the trucking business for over 12 years and has had up to 50 trucks. While R. L. Harrison Trucking Company is considered a smaller trucking company, it has served as an important source of employment for over 80 people in the Benton area.

Unfortunately, R. L. Harrison Trucking Company was forced to file a Chapter 11 Petition for Bankruptcy and Reorganization on October 23, 1987. Why was this necessary? What put the Company in this type of position? Was it inefficiency, customer dissatisfaction or poor management?

As founder and president of R. L. Harrison Trucking Company, I can assure you that none of those factors played a role in my company's filing for reorganization. Instead, the principal reason the Company is in this position is because of a number of losses to my company incurred which were caused by shipping brokers who themselves have filed for bankruptcy or failed to forward monies owed to us. One particular broker was holding over $20,000 that was intended to go to my company as payment for services that my company rendered for various shippers. This loss, along with several others caused by brokers failing to forward funds to my company were a principal factor in my filing for reorganization under the bankruptcy laws. In fact, in the last year we lost over $200,000 due to the failure of brokers to forward funds which the shippers intended we receive. As I will explain shortly, losses caused by brokers is a major problem for the smaller carriers in the trucking industry.

The deregulation of the trucking industries has led to increased competition and thinner profit margins. My company certainly has no problem with competition. A competitive industry is a healthy one. However, the thin profit margins caused by tight competition makes any losses of whatever kind critical. As a result, the losses caused by brokers failing to forward to funds from the shipper to the carrier is threatening the existence of many smaller trucking companies.

How does this system work? Suppose my company finds a headhaul leaving Arkansas and going to either California or New Jersey. My company's dispatchers will naturally try to find return loads out of either of those states. However, due to the proliferation of brokers, it is difficult for them to solicit and retain direct business from shippers in those prime locations. Many major companies that are sources of shipping business often just turn the traffic over to brokers. Thus, my company has often had to go through brokers to obtain return loads. While the carrier is performing a service for the shipper, the broker receives the funds for this service from the shipper and is expected to forward these funds to the carrier. Unfortunately, this does not always happen. Many brokers commonly run up accounts receivable of $10,000 to $15,000 to the carriers. Many brokers are individuals or corporations with little or no assets who sometimes fail to forward the funds. Since the broker or his company often has few assets, legal actions against the broker are often futile.

Mr. Chairman, members of the Committee, I believe that the present system of brokering poses a major threat to a vital segment of the trucking industry, i.e., the smaller carriers. I hope that your Committee's review of this problem leads to some constructive ideas for change that will better protect carriers. Changes in the bill of lading system and ideas such as requiring the broker to hold the carrier payments in trust for the shipper should be considered.

The failure of Congress to address this problem will guarantee that many other small carriers will be placed in the same position as my company. I appreciate the opportunity to express my views on this issue, and I thank you for your time.

November 4, 1987

Nancy Kassebaum
302 Russell Senate Office Bldg.
Washington D.C. 20510

Dear Senator:

I am writing in regards to an up coming hearing on fraudulent, dishonest and crooked truck brokers, agents, and trucking companies.

October 14, 1987, I hauled a load of treated lumber from Morristown, Indiana, to Elgin, Illinois, under trip lease to [redacted] Cookeville Tennessee. [redacted]

I was not paid for the load. I was to recieve 75% of $312.50. After repeated billings and phone calls [redacted] I contacted Mr. Henry Seaton of Washington D.C. Henry advised me to contact you. I understand that [redacted] is one of many fraudulent trucking companies oneration in the U.S. In todays economy one can not afford losses to these crooks in the trucking industry.

I would appreciate your help in eleminating the crooks who operate under ICC rules and regulations. It appears to me there is plenty of funding to the D.C. T. to crack down on so called unsafe trucks. May be there would not be so many unsafe trucks if we were paid fair rates for the loads we work so diligently to deliver. If increased funding to ICC, D.O.T., or whatever agency is responsible for regulating these crooks would help, I would be in favor.

One of the biggest problems I have as a small interstate carrier is collecting unpaid accounts. I think this is one of the problems, along with low rates, that is contributing to the lack of maintenance and unsafe trucks. The press has played on the emotional aspects of unsafe trucks. In my opinion the press has not shown the other side of the situation.

One other point I would like to make is that of skimming. The shipper or consignee are paying a fair rate to ship their product. The broker or agents are skimming usery rates of the top. Example: A shipper contacts the broker to move a load at $1.80 per mile. Then the broker offers it to a middleman or trucker who hauls the load for less than a $1.00 per mile. The broker pockets $.80 per mile for a phone call.

Sincerely,

Thomas M. Brown
Tom Brown Trucking
RR1 Box 104
Haddam, KS. 66944

cc Henry Seaton
Suite 525 McLachlen Bank Bldg.
11th and G St. N.W.
Washington D.C. 20001

MILAN EXPRESS CO., INC.

31 E. L. Morgan Drive • Jackson, Tennessee 38305 • Telephone - (901) 424-5175

November 6, 1987

TO: The United States Senate Commerce Committee
The Honorable Senator James Exon, Subcommittee Chairman

RE: Freight Broker Abuses

The following statement summarizes Milan Express's knowledge of and encounters with Broker Abuses.

The Special Commodity Division of Milan Express Co., Inc. operates 107 units which have transported or will transport goods through the use of freight brokers or middlemen. We use brokers only in back haul situations where we can't afford to run the truck empty. We take the chance that we will get paid by the broker rather than run empty.

Our losses from brokers are now in excess of thirty thousand dollars. One case involved a loss of $8,571.50 and we have reason to believe the broker operation simply changed names and is still in operation. Another case involved a loss of $14,076.27. The owner filed chapter eleven and in the meantime became partners in another broker operation.

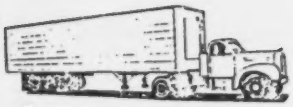
These big losses followed a pattern of paying regularly for several months while building our trust. Then when business was at a high level, the brokers stuck us for one to two months revenue.

Collecting on these bad debts has been almost impossible. Typically, the broker has been under-capitalized with nothing but a rented office, telephone, and a $10,000 surety bond. Because of the amount of revenue involved, it is possible for many brokers to over run the bond in just a matter of hours. In some cases, the bond has been interpreted to only include liabilities to the shipper, not the carrier. Surety bonds only gave us a false sense of security.

The competitive nature of the transportation industry leaves no room for us, the carrier, to continue absorbing these bad debts. We are asking for government action that clamps down on illegal and under-capitalized middlemen.

Jim Szopinski

Jim Szopinski
Assistant Manager
Special Commodity Division
Milan Express Co., Inc.



WARREN COUNTY FREIGHT LINE, INC.
601 RED ROAD
McMINNVILLE, TENNESSEE 37110

McMINNVILLE PHONE 473-5460 OR 473-5506
NASHVILLE PHONE 255-2245
AREA CODE 615

November 6, 1987

Senator J. James Exon
Senate Office Building
Surface Transportation Sub Committee
428 Hart Office Building
Washington, D.C. 20001

Dear Sir:

We are a small trucking company with Tennessee Intra-state authority and nation - wide inter-state authority. On many occassions we will take a load of freight to the west coast and have to depend on a broker to get a load back. We have had many instances where the shipper pays the broker for the load and the broker either skips town or refuses to pay.

We are now in a law suit with a major shipper where we hauled their freight through a broker and they paid the broker. In six years, we have lost at least $ 100,000.00 on brokers. The law suit mentioned above is for $ 35,000.00. This cost us attorney fees and our time plus the lost revenue.

We believe all shippers who use brokers should pay trucker if not paid by broker. We have to haul this freight for a reduced price in order to secure the business. Inother words the broker receives the full published rate and we get less than this rate.

We also would recommend that a close look be taking at re-regulation of the trucking industry.

Sincerely yours,

WARREN COUNTY FREIGHT LINE, INC.

O. M. Womack, Jr.

O.M. Womack, Jr.
President

81-633 (108)